

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

76-
7345

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

Docket No. ~~2156~~ 76-7305

WILLIAM J. DAVENPORT,
Defendant-Appellant

v.

UNITED MUTUAL LIFE INSURANCE CO.
Plaintiff-Appellee.

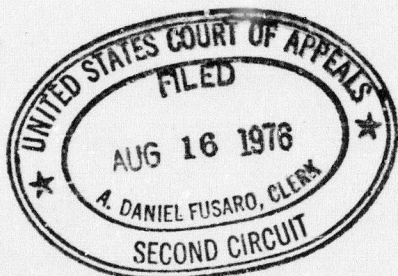
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

CASES RELATED TO THIS APPEAL:

DAVENPORT v. BERMAN	SDNY 68 Civ. 4984
DAVENPORT v. ALTMAN, et. al.	SDNY 71 Civ. 4263
DAVENPORT v. AMARO, et. al.	SDNY 74 Civ. 3302
HOUSING AND DEVELOPEMENT ADM. OF THE CITY OF N.Y. v. WILLIAM DAVENPORT	SDNY 74 Civ. 5146.

APPELLANT'S

EXHIBITS



William J. Davenport,
Defendant-Appellant, Pro-Se
324 Allaire Ave.
Leonia, N.J. 07605
(201) 944 1174.

APPENDIX

i.

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United States of America

Southern District of New York

ss:

I, RAYMOND F. BURGHARDT, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the writings annexed to this certificate To wit: Xerox copy of OPINION # 40985., UNITED MUTUAL LIFE INSURANCE COMPANY -vs- WILLIAM J. DAVENPORT, et al., 70 Civil 3878., filed in this court July 19, 1974.*****

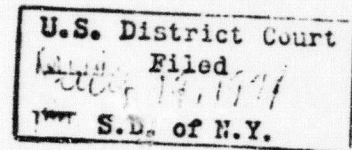
have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 22nd day of July in the year of our Lord one thousand nine hundred and Seventy-four and of the Independence of the United States the One Hundred and Ninety-ninth.

Raymond F. Burghardt, Clerk.

A(a)i

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x

UNITED MUTUAL LIFE INSURANCE COMPANY, :

Plaintiff, :

- against - :

WILLIAM J. DAVENPORT, SALOMA B. :

DAVENPORT, WILLIAM WATTS, GRACE WATTS, :

et al., :

Defendants. :

----- x

A P P E A R A N C E S:

Messrs. Paterson Michael Dinkins & Jones
888 Seventh Avenue
New York, New York 10019
by Paul Moore, Esq.
Attorney for Plaintiff

Mr. William J. Davenport
324 Allaire Avenue
Leonia, New Jersey 07605
Pro Se

CARTER, District Judge

A (a) ii

O P I N I O N

This is a foreclosure action initially brought in the Supreme Court of the State of New York, Bronx County, and removed to this court by the defendant. Plaintiff is a domestic corporation organized and existing under the laws of the State of New York, having its principal place of business in the City, County, and State of New York. It is the owner and holder of a bond and mortgage on property located at 575 East 168th Street in the Bronx. Defendant, appearing pro se, is the mortgagor and owner of that property, and is a citizen and resident of New Jersey. The amount in controversy exceeds \$10,000, exclusive of interest and costs.

On October 27, 1970, on motion of the defendant,¹ then-District Judge Mansfield ordered plaintiff to act as receiver for the subject property during the pendency of this action, to take from the Sheriff of Bronx County rents then held in escrow, and to manage the property and collect rents in reduction and abatement of its mortgage.

-
1. Plaintiff did not respond to the motion. However, paragraph (f) of the complaint's ad damnum seeks the appointment of a receiver pendente lite.

A (a) 1.

On July 12, 1971, defendant filed a "Motion Seeking an Accounting and Clarification of the Requirements of Receivership," which motion plaintiff opposed. In the affidavit of its counsel filed in support of its motion, plaintiff stated, inter alia, that: it in fact never received the pre-receivership rents held in escrow by the Sheriff of Bronx County even though demand was duly made; it in fact had not acted as receiver, nor collected rents from the property; defendant's motion for an accounting was premature, in that Davenport would be entitled to an accounting at the close of the action. After a hearing, Judge Motley endorsed the motion as follows: "Motion disposed of in accordance with Court's ruling, following argument. Submit proposed order as agreed upon." It appears that no such order was ever submitted. (BY PLAINTIFF, COURT REJECTED OFFER BY DEFENDANT DAVENPORT)

On May 17, 1974, plaintiff failed to appear when this case was called on a Review Calendar. Defendant did appear, apparently expecting to argue, without notice to the plaintiff, a motion filed the same day. Later that day, I signed an order dismissing this action for plaintiff's failure to prosecute.

(See MOTION D(b))

On May 21, 1974, defendant's motion, styled "Defendants Petition for Relief Upon Dismissal of this Action," was routed to my chambers. In substance, defendant asserts therein that the sums which plaintiff should have collected as receiver exceed the amount of defendant's mortgage indebtedness, and consequently prays that the court's order dismissing the action include an order dissolving the mortgage lien and releasing defendant from the underlying indebtedness. A conference on the matter was set for June 19, 1974, on which date I directed the plaintiff to file with the court by June 27, 1974, a statement of accounting, covering the period of its receivership. a

On June 27, plaintiff forwarded to the court a document which is merely a schedule of mortgage transactions. As such, it records when mortgage payments were due; when if at all they were received; amounts due; amounts actually received; allocation of payments among principle, interest, an escrow account (for insurance, taxes, and the like), and late charges; and the remaining principal balance. The document does not, however, contain a clue as respects the amount of rents or payments in lieu of rent received from the subject property's tenants during the receivership. Nor does b

it indicate where, if other than into the coffers of plaintiff, such moneys have gone, or why, if such be the case, no rents have been collected by anyone. Accordingly, the bottom line of the mortgage schedule-- that defendant's principal balance is \$15,961.04, and that his interest, escrow account, and late charges arrearages are \$795.53, \$2,890.25, \$186.36 respectively-- is of little if any value in determining whether and in what manner plaintiff has discharged its obligations as receiver.

It is well settled, that "a receiver, as 'an officer or arm of the court,' is a trustee with the highest kind of fiduciary obligations. He owes a duty of strict impartiality, of 'undivided loyalty,' to all persons interested in the receivership estate, and must not 'dilute' that loyalty. He is 'bound to act fairly and openly with respect to every aspect of the proceedings before the court. ... The court, as well as all the interested parties,' have 'the right to expect that all its officers,' including the receiver, will not 'fail to reveal any pertinent information or use their official position for their own profit or to further the interests of themselves or any associates.' [citations omitted]." Phelan v. Middle States Oil Corp., 154 F. 2d 978, 991 (2d Cir. 1946). It is equally clear

that "[w]here a receiver has a possible personal interest adverse to those of any parties to the receivership, it is usually unwise for him to participate in the [underlying transactions]; if he does so he must act with unusual caution; that the court has acquiesced in his participating does not relieve him of his duty of disinterestedness." Id. Finally, where as here a receiver's accounting is objected to, and the record reflects that the receiver has a personal interest in conflict with the interests of one of the parties (here the defendant) to whom it owes a duty of loyalty, the burden is on the receiver to show that the objecting party did not suffer actionable loss from any actions by the receiver in which the potentially conflicting interest could have surfaced. Phelan v. Middle States Oil Corp., 220 F. 2d 593, 600 (2d Cir.), cert. denied, 349 U.S. 929 (1955).

In the instant action, the plaintiff-receiver apparently has taken the same casual approach to its receivership responsibilities as it has toward prosecution of this suit. Without impugning the motives of plaintiff, or suggesting that any malfeasance of misfeasance has occurred, the conclusion is inescapable that plaintiff has failed to meet its burden of proving that defendant has not been injured by the fact that

since November, 1970, he has been deprived of rental income from the subject property, and yet has not received the countervailing benefit of a reduction in his mortgage principal.

To dismiss this action for failure to prosecute without taking into account defendant's application would, in effect, deprive defendant of the difference between what he would have taken in as rental income between November 1, 1970, and July 1, 1974, and the \$6,483.52 which plaintiff's mortgage accounts record as the "amount received" during the same period. Accordingly, my order of May 17, 1974, is vacated, the lien on the subject property is dissolved, defendant is released from the underlying obligation, the receiver is discharged without compensation for fees or costs, and the action is dismissed with prejudice for failure to prosecute.

SO ORDERED.

Dated: New York, New York
July 19, 1974

Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

A(4)6

R.S.
7/22/74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Court House, Foley Sq
New York, N.Y. 10007

WILLIAM DAVENPORT
324 Allaire Ave
Leonie Ave N.J. 07605

DATE 4-9-75

TITLE. UNITED MUTUAL LIFE -v- DAVENPORT.

DOCKET NUMBER PRO SE 70 Civ 3878

DECISION DATE 4-3-75

JUDGE Carter

Sir

THERE IS ENCLOSED HERewith A COPY OF A DECISION
FILED AND ENTERED IN THE ABOVE ENTITLED PROCEEDING

Very Truly yours

RAYMOND F. BURGHAEDT

by Joel Blum

Deputy PRO Se Clerk

A (b) i

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED MUTUAL LIFE INSURANCE COMPANY,

Plaintiff,

- against -

WILLIAM J. DAVENPORT, SOLOMA B.
DAVENPORT, WILLIAM WATTS, GRACE WATTS,
et al.

----- x
A P P E A R A N C E S:

Messrs. Paterson Michael Dinkins & Jones
888 Seventh Avenue
New York, New York 10019
Attorney for Plaintiff

Mr. William J. Davenport
324 Allaire Avenue
Leonia, New Jersey 07605
Pro Se

CARTER, District Judge

A ⑥ ii

MICROFILM

APR 07 1975

APR 4 3 21 PM '75
S.D.N.Y.
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

#42189
Pro Se 70 Civ. 3878

OPINION

This matter, involving a mortgage on rents from property located at 575 East 168th Street, Bronx, New York, has been pending in this court since 1970, pursuant to its removal from the Supreme Court of the State of New York, Bronx County, on motion of defendant, acting pro se. On October 27, 1970, in response to defendant's motion, not answered by plaintiff, plaintiff was ordered by Judge Mansfield to act as receiver for the property, to manage the property and collect the rents in reduction and abatement of the mortgage. In 1971, again on motion by defendant, at oral argument before Judge Motley a certain disposition was agreed upon which was to have been embodied in an order to be subsequently submitted. No order was in fact submitted: *(see note or Record. Plaintiff non-compliance)*

?
Opinion
40985
7/19/74

I then inherited the case, and on May 17, 1974, called the case on Review Calendar. Plaintiff did not appear, and the case was dismissed for lack of prosecution. Defendant on May 21, 1974, filed a motion asserting that his underlying indebtedness had been more than satisfied from the rents collected by plaintiff as receiver. A conference was held on

← Error!
see
40985 PSD(a)
u a

INCORRECT
COPY ^{see} OF MOTION D(b)

A(b) 1-

Amount - \$21,000.00

June 19, 1974, at which time, as I recall, someone [?] who had no knowledge whatsoever of the transaction appeared to represent the plaintiff. Plaintiff was ordered to file with the court by June 27, 1974, a statement of accounting covering its receivership. Plaintiff filed a document on June 27, which as my opinion on this subject on July 19, 1974 indicates, and as plaintiff now concedes, did not contain the information which had been ordered submitted. Defendant's motion was granted.

The plaintiff now over six months later seeks to have the matter reconsidered. In support of its motion plaintiff submits a letter dated April 10, 1972, which purports to be an agreement between it and defendant pursuant to which defendant and his wife were authorized to collect the rents and manage the property, and has submitted a statement showing payment made on the mortgage since April 10, 1972--the document requested by the court last June. Plaintiff argues that its inattentiveness and negligence in respect of this action was based on its agreement with defendant set forth in the April 10, 1972 letter. While that explanation does not suffice to excuse plaintiff's studied neglect in either prosecuting this matter or in giving to the court when requested information sufficient for

SAME INFORMATION

ERROR
IN CORRECT

it to make a rational determination, the prior order was issued on the theory that plaintiff as "receiver" had breached its fiduciary responsibilities in dealing with the court in re this matter. If it was in fact not receiver at the time in question, it may well be that an injustice has been done. While plaintiff contributed to this result and could be denied redress, defendant should not be allowed to profit on the basis of mis-
information supplied to the court.

STATEMENT, TESTS
BUT NO SUCH INFORMATION
IS FACT IT IS.

The case will be called for an evidentiary hearing for the purpose of determining what the true facts are. The parties will be given notice of the hearing date. On the basis of the hearing, the court will determine whether reconsideration is warranted.

It is SO ORDERED.

Dated: New York, New York
April 3, 1975

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

A (6)-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED MUTUAL LIFE INSURANCE CO., :

Plaintiff, :

- against - :

70 Civ. 3878

WILLIAM J. DAVENPORT, SALOMA DAVEN- :

PORT, WILLIAM WATTS, GRACE WATTS, :

JOHN DOE, RICHARD ROE, JAMES POE, :

and BILLY BOW, the last four names of :

defendants being unknown to plaintiff, :

intending thereby to designate tenants :

or occupants of the mortgaged premises, :

Defendants. :

- - - - - x

A P P E A R A N C E S:

Paterson, Michael, Dinkins & Jones, Esq.
888 Seventh Avenue
New York, New York

By David N. Linkins, Esq.
Nicholas M. Cherot, Esq.
Attorneys for Plaintiff

Mr. William J. Davenport
324 Ellaire Avenue
Leonia, New Jersey 07605
Pro Se Attorney for
Defendants William J. Davenport
and Saloma Davenport

CARTER, District Judge .

ACJi

O P I N I O N

On June 17, 1964, defendants, citizens of New Jersey, obtained a loan of \$21,000 from plaintiff, a corporation with principal offices in New York. The agreed-upon interest rate was 6% and defendants agreed to repay the principal and interest in monthly installments of \$177.24. As collateral for the loan defendants mortgaged to plaintiff the premises they owned at 575 East 168th Street in the Bronx. The mortgage was duly recorded in the office of the City Register, Bronx County. The mortgage agreement required that defendants pay to the plaintiff on the first of each month one-twelfth of the estimated annual real estate taxes, assessments, fire insurance premiums, sewer and water charges.

The loan agreement and mortgage provided that in the event of a 15-day default in payment of an installment of interest or principal, or a 30-day default in the payment of any tax, water charge or assessment, or any other default, the entire principal and interest would become due and payable and would entitle the plaintiff to foreclose the mortgage and to sell the mortgaged premises.

ACJL.

In May, 1969, the parties modified their original agreement by extending the time of payment of the principal indebtedness and changed the interest rate from 6% to 7-1/4% per annum. Monthly installments covering both principal and interest pursuant to this agreement were \$191.85.

The February 1, 1970, installment of principal and interest was not paid and default therein continued in excess of fifteen days. The February 1, 1970, monthly installment of one-twelfth of the estimated real estate taxes, assessments, fire insurance and sewer and water charges was not paid and default therein extended in excess of 30 days. An action to foreclose was commenced in the State Supreme Court. Defendants removed the case to this court and moved to have plaintiff appointed receiver. This motion was granted on October 28, 1970, to the extent that plaintiff as mortgagee was to take from the Sheriff the rents then held in escrow, to manage the property and to collect all future rents in the reduction and abatement of the mortgage.

At the hearings on April 28, and May 1, 1975, Winston D. Grace, plaintiff's secretary-treasurer testified that no effort had been made by plaintiff to collect the rents or take any profits from the

premises; that plaintiff was not equipped to perform that function. Instead, plaintiff kept negotiating with defendants to have them agree to continue to collect the rents. An agreement to this effect was reached on April 10, 1972, or so plaintiff believed. The agreement provided that the Davenports collect the rents and manage the premises. It was also agreed that for one year beginning May 1, 1972, the monthly payments on the mortgage were to be \$365 per month. The defendants agreed to be responsible for payment of all fuel bills, and a moratorium on the payment of the principal was agreed upon until all other indebtedness had been reduced. Plaintiff agreed not to proceed further with its foreclosure proceedings. Defendants dispute the genuineness of the signatures on this agreement, but Russell D. Osborn, a handwriting expert, has testified that the signatures are those of the defendants. His and defendants' own testimony leave no doubt that the signatures are in fact those of Saloma and William Davenport.

Defendants, with a fair amount of regularity, made monthly payments pursuant to this agreement between April 10, 1972 and June, 1973. Since June, 1973, however, only one payment has been made. Defendants take

the position that it was plaintiff's responsibility as receiver to collect the rents, and that its failure to do so frees defendants of their indebtedness. The proof establishes, however, that plaintiff never contemplated nor assumed responsibility for collecting any rents. Its position has been that defendants, as owners of the property, can best perform this function, which was plaintiff's reason for securing defendants' agreement to collect the rents and look after the property. While plaintiff did not undertake to collect the rents, seeking instead to have defendants perform that function, it did take steps to preserve the property by advancing sums for taxes, assessments, fire insurance, and water charges. There is no evidence that plaintiff has itself collected any rents, and no proof of fraud, neglect or bad faith attributable to plaintiff in connection with this property has been shown.

The simple fact is that defendants are in default on obligations which they have assumed and which are owing to the plaintiff. The evidence shows that they have long been in default on principal and interest due under their bond and mortgage in plaintiff's favor. Accordingly, plaintiff is entitled to judgment against defendants for the full amount of

indebtedness due and owing on the bond and mortgage.
See Broadway Savings Bank v. Rosenblat, et al., 30
A.D. 2d 773, 301 N.Y.S. 2d 161 (1st Dept. 1969). Pur-
suant to the terms of their agreement, plaintiff is
entitled to foreclose on the mortgage and sell the
premises with the proceeds of the sale to be applied
against defendants' indebtedness.

SETTLE ORDER.

Dated: New York, New York
March 17, 1976

Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

A (c) 5

NOTICE OF ENTRY

Sir:—Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

USDJ R.L. Carter

Index No. 70 Civ 3076

Year 19 70

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

UNITED MUTUAL LIFE INSURANCE CO.,

Plaintiff,

— v. —

WILLIAM J. DAVENPORT, et. al.,

Defendants.

DEFENDANTS PETITION FOR RELIEF
UPON DENIAL OF THIS ACTION.

William J. Davenport,

Attorney for Defendant, Pro-Se

Office and Post Office Address, Telephone

324 Allaire Ave.

Lenox, N.J. 07605

(201) 944 1174

To Winston D. Grace, Sec-Treas.

UNITED MUTUAL LIFE INSURANCE CO.

Attorney(s) for Plaintiff—

210 Lenox Ave. — New York, N.Y.

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

THIS IS THE DOCUMENT OF JUDICIAL REFERENCE AS

" filed on May 21, 1974"

A. (2) 1

BEST COPY AVAILABLE

4. If you want to make a copy of this document, please contact the clerk of the court.
 ADDRESS ONLY. Place the same endorsement in line 2 of the return slip.
 SEP 20 1960

5. Save this receipt and present it if you make inquiry.

UNITED STATES DISTRICT COURT FOR
 THE SOUTHERN DISTRICT OF NEW YORK

----- x
 UNITED MUTUAL LIFE INSURANCE CO,
 Plaintiff,

v.

WILLIAM J. DAVENPORT, et. al.,
 Defendants.

; 70 Civ. 3878 R.L.C.

: Pro - Se.

: DEFENDANTS PETITION FOR RELIEF
 UPON DISMISSAL OF THIS ACTION.

----- x

Whereas this court entertains it's own motion to dismiss this action for want of prosecution. Defendant William J. Davenport appears herein pro-se asking this court to note that:

Of Record he originally removed this action into this court for the purpose of preventing an unjust assignment of costs and damages to him for which he is not rightly responsible, and for which responsibility of other defendants in this action plaintiff has been totally negligent. And,

Thereto, in accordance with plaintiff's demand in the original summons instituting this action, as well as the defendant Davenport's motion, this court has assigned recievership authority to plaintiff which he also appears to have neglected, except to opose action by defendant William J. Davenport to have this court declare that recievership abandoned and thereby void. And,

Whereto there now stands before this court a motion by the defendant
William J. Davenport seeking an accounting for the funds involved, for which
the reciever is lawfully responsible, and defendant should not further be held
to plaintiff's account as indebted. And,

Whereas this court would cause injustice and injury to defendant William
J. Davenport if this case is dismissed without judgement settling the absent
account of it's own assigned recievership, and

Whereas the funds now involved total an amount which equals and
surpasses plaintiff's claim being in an amount greater than eighteen thousand
dollars (\$18,000.00).

WHEREFORE the defendant William J. Davenport, seeks inclusion as
judgement, in any dismissal order of this court, release totally and forever
from the claim of any mortgage lein herein stated by the plaintiff UNITED

And 1.-

MUTUAL LIFE INSURANCE CO. upon the involved captioned property, which is otherwise the personal real property of the defendant William J. Davenport, with dower rights belonging to his wife Saloma B. Davenport.

Respectfully submitted,

William J. Davenport, pro se.
(a) Defendant in this action.
324 Allaire Ave. Leonia, N.J. 07605
(201) 944 1174.

The forestated is sworn true
by signatory before me, on
this 17 th Day of May, 1974.

Interest 575 East 168th Street
Late Charge Bronx, New York

Amount -

DATE	DATE RECEIVED	MONTHLY PAYMENT	AMOUNT RECEIVED	
1/1/72	-0-	391.00	-0-	1
2/1/72	-0-	391.00	-0-	2
3/1/72	-0-	391.00	-0-	3
4/1/72	-0-	391.00	-0-	4
5/1/72	4/10/72		1,500.00	5
6/1/72	-0-	391.00	-0-	6
7/1/72	5/3/72		365.00	7
8/1/72	-0-	391.00	-0-	8
9/1/72	6/12/72		365.00	9
10/1/72	6/13/72			
11/1/72	6/22/72			
12/1/72	-0-	391.00	-0-	
1/1/73	7/18/72		365.00	5
2/1/73	-0-	391.00	-0-	
3/1/73	-0-	391.00	-0-	
4/1/73	9/11/72		365.00	6
5/1/73	9/11/72		265.00	7
6/1/73	-0-	391.00	-0-	
7/1/73	10/24/72		415.00	8
8/1/73	10/20/72			
9/1/73	-0-	391.00	-0-	
10/1/73	-0-	391.00	-0-	
11/1/73	12/4/72		415.00	9
UNPAID INTEREST AND ESCROW ADVANCES DUE UNITED MUTUAL AT				
12/1/73	-0-	365.00	-0-	
1/1/74	1/16/73		365.00	10
2/1/74	-0-	365.00	-0-	
3/1/74	2/8/73		365.00	11
4/1/74	-0-	365.00	-0-	

\$21,000.00

June
6/74

INTEREST PAYMENT (UNPAID)	ESCROW RECEIPTS & (DISBURSEMENTS)	LATE CHARGES (UNPAID)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE
(98.28)	-0-	-0-	-0-	15,961.04
(98.28)	-0-	-0-	-0-	15,961.04
(91.94)	-0-	-0-	-0-	15,961.04
(98.28)	-0-	-0-	-0-	15,961.04
1,500.00				
(95.11)	-0-	-0-	-0-	15,961.04
365.00				
(98.28)	-0-	-0-	-0-	15,961.04
365.00				
	L/I (266.71)			
LEGAL FEES	(376.00)			
(95.11)	-0-	(14.60)	-0-	15,961.04
365.00				
(98.28)	-0-	(14.60)	-0-	15,961.04
(98.28)	-0-	-0-	-0-	15,961.04
335.23	.57	29.20		
	265.00			
(95.11)	-0-	(14.60)	-0-	15,961.04
95.11	305.29	14.60		
	F/I (590.00)			
(98.28)	-0-	(14.60)	-0-	15,961.04
(95.11)	-0-	-0-	-0-	15,961.04
193.39	207.01	14.60		
DECEMBER 31, 1972				
(28.31)	(2,067.34)			
(98.28)	-0-	(14.60)	-0-	15,961.04
81.34	269.06	14.60		
(98.28)	-0-	-0-	-0-	15,961.04
81.34	283.66			
(88.77)	-0-	(14.60)	-0-	15,961.04

A (e) 1a

Interest 575 East 168th Street
Late Charge Bronx, New York

Amount - \$21,000.00

DATE DUE	DATE RECEIVED	MONTHLY PAYMENT	AMOUNT RECEIVED	INTEREST PAYMENT (UNPAID)
4/1/73		365.00		(98.28)
	4/11/73		365.00 12	154.80
	4/10/73			
5/1/73		365.00		(95.11)
	5/8/73		365.00 13	161.24
6/1/73		423.00		(98.28)
	6/25/73		365.00 14	98.28
	6/22/73			
7/1/73	-0-	423.00	-0-	(95.11)
8/1/73	-0-	423.00	-0-	(98.28)
9/1/73	-0-	423.00	-0-	(98.28)
10/1/73	-0-	423.00	-0-	(95.11)
	10/17/73			
	10/17/73			
	10/30/73			
11/1/73		423.00		(98.28)
	11/2/73 (RECEIVED FROM SHERIFF)	603.52	15	485.06
12/1/73	-0-	423.00	-0-	(95.11)
	ESCROW ADVANCES DUE UNITED MUTUAL AT DECEMBER 31, 1973			
1/1/74	-0-	424.00	-0-	(98.28)
2/1/74	-0-	424.00	-0-	(98.28)
3/1/74	-0-	424.00	-0-	(88.77)
4/1/74	-0-	424.00	-0-	(98.28)
5/1/74	-0-	424.00	-0-	(95.11)
6/1/74	-0-	424.00	-0-	(98.28)
7/1/74	-0-	424.00	-0-	(95.11)

TOTAL AMOUNT DUE UNITED MUTUAL
AT JULY 1, 1974

(795.53)

ESCROW RECEIPTS & (DISBURSEMENTS)	LATE CHARGES (UNPAID)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE
-0-	-0-	-0-	15,961.04
195.60	14.60		
R/E (403.69)			
-0-	-0-	-0-	15,961.04
203.76			
-0-	(14.60)	-0-	15,961.04
252.12	14.60		
L/I (266.71)			
-0-	(16.92)	-0-	15,961.04
-0-	(16.92)	-0-	15,961.04
-0-	(16.92)	-0-	15,961.04
-0-	(16.92)	-0-	15,961.04
R/E (410.21)			
W/S (474.96)			
F/I (590.00)			
-0-	-0-	-0-	15,961.04
118.46			
-0-	(16.92)	-0-	15,961.04
(2,890.25)			
-0-	(16.96)	-0-	15,961.04
-0-	(16.96)	-0-	15,961.04
-0-	(16.96)	-0-	15,961.04
-0-	(16.96)	-0-	15,961.04
-0-	(16.96)	-0-	15,961.04
-0-	(16.96)	-0-	15,961.04
-0-	(16.96)	-0-	15,961.04
-0-		-0-	15,961.04
(2,890.25)	(186.36)		15,961.04

A(e)16

Mo	Date	Disbursements	Date	Payment Due	Amount Received	Late Charges
ue	Rec'd					
<u>1972</u>	BALANCES B/F					
	4-10-72				1500.00	1
May 1	5- 3-72			365.00	365.00	2
June 1	6-12-72			365.00	365.00	3
		Legal Fees	6-22-72			
		L.I.Premium	6-13-72			
Jul 1	7-18-72			365.00	365.00	5
Aug 1				365.00	-	
Sep 1	9-11-72			365.00	365.00	6
	9-11-72				265.00	7
		Due Company:				
Oct 1	10-24-72			365.00	415.00	8
		F.I.Prem.	10-20-72			
Nov 1				365.00	-	
Dec 1	12- 4-72			365.00	415.00	9
		Due Company				
<u>1973</u>						
Jan 1	1-16-73			365.00	365.00	10
Feb 1	2- 8-73			365.00	365.00	11
Mar 1				365.00	-	
Apr 1	4- 1-73			365.00	365.00	12
		R.E.Tax	4-10-73			
May 1	5-8-73			423.00	365.00	13
Jun 1	6-25-73			423.00	365.00	14
		L.Ins.Prem.	6-22-73			
Jul 1				423.00	-	
Aug 1				423.00	-	
Sep 1				423.00	-	
Oct 1				423.00	-	
		R.E.Tax	10-17-73			
		W & S Chgs	10-17-73			
		Fire Ins.Prem.	10-30-73			
Nov 1	11-2-73 (Rec'd from Sheriff)			423.00	603.52	15
Dec 1				423.00	-	
		DUE COMPANY				

Due for
Interest

To
Escrow

To
Principal

Mar
3/75

(1612.50) 15,961.04

1500.00

365.00

365.00

(376.00) 4

(266.71)

365.00

335.23

.57

265.00

(1989.64)

15,961.04

95.11

305.29

(590.00)

193.39

207.01

(2067.34)

15,961.04

81.34

269.06

81.34

283.66

154.80

195.60

(403.69)

161.24

203.76

98.28

252.12

(266.71)

(410.21)

(474.96)

(590.00)

485.06

118.46

(2890.25)

15,961.01

Aleja

WELL INTO BETWEEN THE PARTIES ON APRIL 10, 1974

Date Rec'd	Disbursements	Date	Payment Due	Amount Received	Late Charges
---------------	---------------	------	----------------	--------------------	-----------------

BROUGHT FORWARD-DUE COMPANY

	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-
	424.00	-

BALANCES AS NOVEMBER 14, 1974
DUE COMPANY-----

\$7,386.48 ON MONTHLY PAYMENTS.
\$2,890.25 Escrow Advances Due Compar
\$15,961.04 Principal Balance Owed on

WINSTON D. GRACE, Secretary-T
Life Insurance Company, being
for supervision of the Mortga
poration, hereby certifies th
forth above has been extracte
and is true and correct to th

Winst

es	Due for Interest	To Escrow	To Principal
		(2890.25)	15,961.04

(2890.25) , 15,961.04

ompany
d on Mortgage.

ary-Treasurer of United Mutual
being the officer responsible
mortgage Department of said cor-
es that the information set
racted from the company's records
to the best of his knowledge.

Winston D. Grace

Winston D. Grace-Secretary-Treas.

A(e)2b

*Recd 7/21/76
Chapman*

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE, FOLEY Sq.
NEW YORK, N.Y. 10007

William J Davenport
324 Allaire Ave.
Leonia, New Jersey- 07605

DATE 7-9-76

TITLE : United Mutual Life Ins. Co., -v- Davenport
DOCKET NUMBER 70 Civ 3878
DECISION DATE 5-14-76
JUDGE : Carter

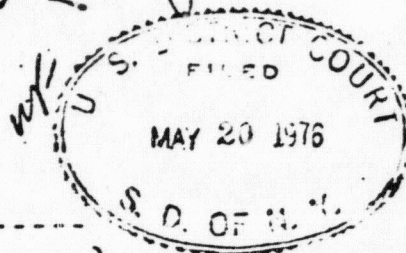
THERE IS ENCLOSED HERewith A COPY OF A DECISION FILED AND
ENTERED IN THE ABOVE ENTITLED PROCEEDING.

YOURS TRULY
RAYMOND F. BURGHARDT
G. Di Giorgio
By - _____
DEPUTY PRO SE CLERK

c.c.
Louis J. Lefkowitz
Atty. General
State of New York
Two World Trade Center
New York, N.Y. 10047

PATERSON MICHAEL & JONES *Carter*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED MUTUAL LIFE INSURANCE CO.,

Plaintiff,

70 Civ 3878 RLC

-against-

JUDGMENT

WILLIAM J. DAVENPORT, SALOMA DAVENPORT,
WILLIAM WATTS, GRACE WATTS, JOHN DOE,
RICHARD ROE, JAMES POE, and BILLY BOW, the
last four names of defendants being unknown
to plaintiff, intending thereby to designate
tenants or occupants of the mortgaged premises,

Defendants.

76,466

This action came on for hearing before the Court, Honorable Robert L. Carter, District Judge, presiding, and the issues having been duly heard and a decision having been rendered,

Now on motion of Paterson Michael & Jones, attorneys for plaintiff; it is

ORDERED AND ADJUDGED that the plaintiff do recover of defendants WILLIAM J. DAVENPORT and SALOMA DAVENPORT the sum of EIGHTEEN THOUSAND EIGHT HUNDRED FIFTY-ONE and 29/100 (\$18,851.29) DOLLARS principal, plus interest of 7 1/4 percent per annum under the bond and mortgage upon FIFTEEN THOUSAND THREE HUNDRED SEVENTY-EIGHT and 04/100 (\$15,378.04) DOLLARS of said principal, commencing February 1, 1970 and amounting to SIX THOUSAND NINE HUNDRED SIXTY-EIGHT and 25/100 (\$6,968.25) DOLLARS, plus said interest upon the remaining balance, commencing November 1, 1973 and amounting to SIX HUNDRED TWENTY-NINE and 53/100 (\$629.53) DOLLARS, less FOUR

MICROFILM

MAY 2 1976

THOUSAND TWO HUNDRED EIGHTY and 79/100 (\$4,280.79) DOLLARS interest heretofore paid plaintiff by said defendants, leaving a net amount due plaintiff of TWENTY-TWO THOUSAND ONE HUNDRED SIXTY-EIGHT and 28/100 (\$22,168.28) DOLLARS, with interest thereon from the date hereof, plus costs and disbursements in this action to be taxed by the Clerk of this Court with interest thereon from the date hereof, and that plaintiff have execution therefor;

ORDERED AND ADJUDGED that in addition to other remedies available to plaintiff to enforce this judgment the mortgaged premises described hereafter in this judgment shall, at plaintiff's election, be sold free and clear of all right, title, and interest of the defendants, (subject to any state of facts that an accurate survey or a personal inspection of the premises would disclose, zoning ordinances, regulations of various governmental authorities having jurisdiction over the premises, and covenants and restrictions of record), in one parcel, at public auction, to be held at the County Courthouse, 851 Grand Concourse, Bronx, New York, in accordance with the rules and practices of this Court and the provisions of 28 U.S.C. Sections 2001 and 2002, under the direction of the United States Marshal for the Southern District of New York, or his representative; and it is further

ORDERED AND ADJUDGED that upon such sale the United States Marshal for the Southern District of New York, or his representative, shall execute and deliver to the purchaser a deed of the premises sold, upon the purchaser having complied with the terms

of the sale and that the proceeds of such sale shall be deposited with the Clerk of this Court and paid out by him, after payment to the appropriate governmental authorities for all unpaid state and local taxes, assessments, water rates, and sewer rates which became charges or liens on said premises until the date of sale, and after payment to the United States Marshal for the Southern District of New York for the costs and expenses incurred by him in connection with the sale of said premises, as follows:

(1) To the plaintiff, its costs and disbursements of this action as taxed and the additional allowance pursuant to CPLR Section 8302(b);

(2) To the plaintiff, the said amount hereinbefore adjudged to be due plaintiff with interest, or so much thereof as said monies will pay;

(3) The ance, if any, shall be surplus money and shall be disposed of pursuant to a surplus money proceeding, upon such terms as this Court may direct; and it is further

ORDERED AND ADJUDGED, that the plaintiff may purchase the mortgaged premises, and in such event, the United States Marshal for the Southern District of New York or his representative, shall not require the plaintiff to pay in cash the amount bid at the sale, but shall execute and deliver to said purchaser a deed to the premises sold, upon payment to the Marshal, or his representative, of the amount of all unpaid state and local taxes, assessments and water and sewer rates, as described in subparagraph (1)

above; and it is further

ORDERED AND ADJUDGED that the United States Marshal for the Southern District of New York shall promptly file his report of the sale with the Clerk of this Court, and the purchaser at the sale shall have the right to possession of the premises upon production of the Marshal's deed; and it is further

ORDERED AND ADJUDGED that each and all of the defendants and all persons claiming under them after the filing of the notice of pendency in this action, are, upon plaintiff's election to sell the mortgaged premises, hereby forever barred and foreclosed of all right, title, claim, lien and interest in and to the mortgaged premises, and in and to each and every part thereof. The mortgaged premises affected by this judgment are described as follows:

ALL that certain plot, piece or parcel of land with the building and improvements thereon erected, situate, lying and being in the Borough of Bronx, County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point of intersection of the northerly side of 168th Street and the easterly side of Fulton Avenue as now widened; running thence northerly along the said easterly side of Fulton Avenue, 28 feet; thence easterly parallel or nearly so with 168th Street and part of the way through a party wall, 89.62 feet; thence southerly 27.93 feet to the northerly line or side of 168th Street at a point therein distant 91.82 feet easterly from the point or place of beginning; thence westerly along the northerly side of said 168th Street; 91.82 feet to the point or place of BEGINNING.

Said premises being known as and by the street number 575 East 168th Street; and it is further

ORDERED AND ADJUDGED THAT THE CLERK OF THIS COURT IS

ORDERED AND ADJUDGED that the Clerk of this Court is directed to enter the judgment forthwith.

DATED: New York, New York this ~~14th~~ day of *May* 1976.

Robert C. Carter ... *fl*
U.S.D.J.

Judgment entered this ~~21st~~ day of *May* 1976.

Raymond F. Berghardt
Clerk of Court

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

HOUSING AND DEVELOPMENT ADMINISTRATION
OF THE CITY OF NEW YORK,

Plaintiff,

— against —

COMMUNITY HOUSING IMPROVEMENT
PROGRAM, INC., SEYMOUR ZUCKERMAN,
WILLIAM MOSES, SHELDON C. KATZ,
SANFORD SIROLNICK, JOSEPH SIROLNICK,
PHILIP SIRONICK, LEONARD WEINTRAUB,
LAWRENCE GOLD, SHELDON REALTY CORP.,
SARI REALTY CO., WAYPARK REALTY CORP.,
J & D REALTY CORP., DAVID REALTY CORP.,
SANDY SIROLNICK REALTY CORP., BENSON
REALTY CORP., SEMINOLE REALTY CO.,
HICKLEY REALTY CORP., EXCEL REALTY,
MORRIS WEINTRAUB ASSOC., MAYFLOWER
REALTY CO., WEINTRAUB ASSOC.,

Defendants.

HP 186/1974

DECISION

SEPTEMBER 9, 1975.

Before:

HONORABLE BERNARD KLIEGER,

Judge.

Printed as a Public Service
by:

CHIP

575 West End Avenue
New York City 10024

799-9348
596-7272

A. i.
C. 9 (B)

Appearances:

W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Attorney for Plaintiff
Municipal Building
New York, New York

BY: PETER S. HERMAN, ESQ., of Counsel

SAXE, BACON, BOLAN & MANLEY, ESQS.
Counsel for Defendants
39 East 68th Street
New York, New York

BY: ROY M. COHN, ESQ., of Counsel

MELIKIAN & PECK, ESQS.
Counsel for Defendants
276 Fifth Avenue
New York, New York

BY: JAMES M. PECK, ESQ., of Counsel

DR. LORRAINE MILLER
Chairman of the Housing Court Advisory Council
299 Broadway
New York, New York

Appearing as Amicus Curiae

A. ii.
G

Plaintiff New York City Housing and Development Administration (hereafter "HDA") is a superagency of the City of New York, with responsibility for enforcement of housing standards set by state and local laws and regulations.

Defendant Community Housing Improvement Program, Inc. (hereafter "CHIP") is a New York membership corporation composed of owners of real property in New York City. The other defendants are officers and members of CHIP's Board of Directors, and owners of real property.

HDA commenced this proceeding to enjoin defendants from a planned shutdown of boilers for "maintenance" purposes, to take place December 5, 1974. A temporary restraining order was granted by this Court and has been continued until this time. Defendants have agreed not to promote such a shutdown, and this Court finds that the proposed action was organized by CHIP to dramatize certain housing issues not directly related to boiler maintenance. To protect the public, this Court now grants HDA's application for a permanent injunction.

A hearing on December 5 was adjourned to December 17, 1974, to afford CHIP the opportunity to raise related issues, and there have been a number of subsequent adjournments. Defendants answered on December 9 and pleaded two counterclaims. One counterclaim sought \$1 million for abuse of process. Plaintiff moved to dismiss this counterclaim or for a more definite statement. Plaintiff's motion to dismiss that counterclaim is now granted.

The other counterclaim of that date sought \$750 million on the ground that HDA had engaged in conduct calculated to destroy property. HDA moved to dismiss that counterclaim, or for a more definite statement. This counterclaim was not pursued at the hearings, and HDA's motion to dismiss is granted.

CHIP added a third counterclaim on December 17, 1974, and asked the Court to order a "pass-along" of increased fuel costs to tenants in rent-controlled apartments. HDA again moved to dismiss. There was general agreement, and the Court took judicial notice of the fact, that fuel costs had increased enormously in the previous 18 months and added a tremendous burden to already beleaguered property owners. However, the Court believes that alleviation of that burden is primarily a legislative matter and now grants the motion to dismiss this counter-

claim. It notes that a fuel cost "pass-along" was enacted as Local Law No. 27 of 1975, having been adopted by the City Council on May 9, and approved by the Mayor on June 2, 1975.

After prior notice to all parties, the Court utilized the provisions of New York City Civil Court Act, section 110(c) and on January 28, 1975, ordered that hearings be held in search of "remedies, programs, procedures or sanctions authorized by law" which might better achieve compliance with required housing standards. HDA then brought a proceeding to prohibit and enjoin the Court from holding such hearings, Joy v. Klieger, Supreme Court, Kings County, Index No. 1658/75. An order to show cause was granted by Hon. Frank Composto on January 27, 1975. After a hearing, Hon. Irving P. Kartell ruled on February 5, 1975, that section 110 (c) authorized the proposed utilization of Civil Court Act § 110(c) and denied HDA's application.

Hearings were held, expert witnesses testified and were cross-examined, the Court visited various buildings in the City and studied reports by governmental agencies and knowledgeable individuals. The Court extends its thanks to the officials, professors, representatives of organizations, property owners, and others who came forward to assist the Court in its deliberations, and to the attorneys for both parties who participated in the effort.

At the final argument on March 19, 1975, CHIP moved to conform the pleadings to the proof, to include the claim that the rent control and rent stabilization laws violated due process and equal protection provisions of the Constitutions of the United States and New York State. HDA opposed this motion.

Plaintiff will neither be harmed nor impeded by the granting of a motion to permit the defendants to plead the unconstitutional administration of the laws. Access to the courts is meaningless if constitutional issues are prohibited to parties by the recognition of highly technical objections. It is the policy of the courts to permit a party to amend his pleadings in good faith to raise and have determined all questions affecting his rights, Miller v. City of Philadelphia, 113 App. Div. 92, 99 NYS 93; Washington Life Ins. Co. v. Scott, 119 App. Div. 847, 104 NYS 898.

The New York City Civil Court may entertain any defense to a cause of action or claim (New York City Civil Court Act, section 90 including the defense of unconstitutionality of the act or ordinance under which plaintiff is proceeding (Cf. Lincoln Bldg. Assoc. v. Barr) 1 Misc. 2d 560, 149 NYS 2d 460, affd, 1 NY 2d 413).

AGP

110
1110
Judgment
53d - 1, 1975

Various provisions of the applicable rent control and rent stabilization laws have already been held constitutional by the Court of Appeals, 8200 Realty Corp. v. Lindsay, 27 NY 2d 124, 313 NYS 2d 733 (1970); Hartley Holding Corp. v. Gabel, 13 NY 2d 306, 247 NYS 2d 97 (1963); Plaza Mgt. Co. v. City Rent Agency, 25 NY 2d 630, 306, NYS 2d 11 (1969), and this Court will not consider those matters anew.

But administration of these laws is a separate matter.

MY BASIC CLAIM

The United States Supreme Court held in the case of Boddie v. Connecticut, 401 US. 371, 379, 28 L. Ed 2nd 113, 91 S CT 780 (1971):

"Our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." (Emphasis ours.)

Where a party claims that a statute is unconstitutional as applied, it is the function of the courts to grant him the opportunity to be heard. For, as Mr. Justice Douglas said, dissenting in part in Lindsay v. Normet, 405 US 56, 84, 31 L.Ed. 2d 36, 57, 92 S.Ct. 862:

DENIED TO ME

"... due process entails the right 'to sue and defend in the courts' a right we have described as 'the alternative to force' in an organized society."

THIS IS DENIED TO ME THUS FAR

A party is deemed to have waived his right to have a statute declared unconstitutional unless the question is raised at the trial in some manner (Dodge v. Cornelius, 168 NY 242). It may be raised by objection, motion, or exception, and certainly by answer (Rule 3211, CPLR; Massachusetts National Bank v. Shinn, 163 NY 360; People ex. rel. Bush v. Houghton, 182 NY 301).

Accordingly, the motion by defendants to conform the pleadings is granted, to the extent that the administration of the City's rent control and rent stabilization laws will be considered.

It is clear that the existence at the same time of both a rent stabilization law and a rent control law creates confusion for tenants, landlords and public officials, and that these difficulties are confounded by the 1971 Vacancy Decontrol Law, the 1974 Emergency Tenants Protection Act, and many other laws. There is little to be said for confusion. Further, chaos in administering a law may make it unconstitutional.

Agg.

II

Discussions of housing conditions and standards in New York City invariably lead to assertions that there is a "housing crisis". Yet, the "crisis" is quite subjective. If the question is asked "Is there a housing crisis?" most people will answer affirmatively; but on any agenda of individual problems, or even New York City problems, housing seems to be far down the list. The mass media consider the "housing crisis" of the same genre as the "education crisis", the "health crisis", the "transportation crisis", etc. It is worth noting that since the recent burgeoning of the City's "fiscal crisis", the media have devoted little time and space to the "housing crisis".

To a large extent, present shortages in housing units are the product of the increasing economically-forced abandonment of such units by landlords.

There was testimony that rental property is being abandoned at a rate exceeding 30,000 units a year, but the generally agreed-upon number by housing and planning agencies is 30,000. While cities without rent control may be suffering abandonments, it is clear however that in cities with rent control, housing units are being pushed over the brink and abandoned because of rent control. Housing units are now regressing from "stable," to "deteriorating," to "dilapidated," to "vacant," to "unsafe," to "abandoned," as a result of many factors, the most significant of which is rent control.

Nonpayment of real estate taxes has created several problems. One of these is the loss of badly-needed revenue to the City, with total arrears now estimated at almost \$600 million, and that does not include arrears in water rents and sewer rents. In almost all such cases, revenue from a building is simply not enough to encompass the required payments, and property owners can not pay taxes.

Further, there is a rent gap of some \$750,000,000. a year created by the MBR "system" as administered.

The rent gap is the difference between what landlords actually collect in rents and what is needed to maintain housing units.

This rent gap makes it impossible for landlords to comply with building codes or to pay for the labor for proper maintenance among other things.

Ag.

The evidence has convinced the Court that rent control had a different impact on building owners from 1943 to 1965, from that in the period since 1965. In the earlier years, owners were able to cut some services and maintenance. They had few vacancies. Inflation and interest rates were moderate. But by the 1960's, no services were left to cut, and code compliance was more strictly enforced. All expenses since 1965 have increased far more rapidly, traumatically compounded by the increase in fuel costs from 6¢ a gallon to 35¢ a gallon in 1973-74. The MBR system cannot digest such increased costs, and the irony may be that an MBR-type system may fail in the 1970's, whereas it probably could have worked in the 1960's. By using the word "worked", the Court means that a system of gradual, moderate, rent increases in the 1960's might have helped much real estate; not that the kind of MBR system we have could have been administered better than now.

III

A discussion of traditional rent control, now embodied in the MBR system, must start with the period before 1970, when it was generally assumed that 1.2 million housing units were covered by traditional rent control. Some units were decontrolled by the 1970 MBR law enacted by the City Council, others by procedures in the traditional rent control law (e.g., for new construction), and many more by the Vacancy Decontrol and Primary Residence laws enacted by the State Legislature in 1971. At present, estimated units under MBR are about 850,000 but the City Department of Rent and Housing Maintenance still keeps reports on all units that were formerly under rent control, even units in two-family houses that were decontrolled twenty years ago. Thus, the record-keeping task itself is an enormous burden.

After New York City was given authority over rent control in 1962, it enacted a basic rent control law and made adjustments periodically, by local law or regulation, as situations changed or new problems emerged. Yet, with all the changes, the system could be administered, not least because most tenants and most landlords could compute what the rent should be, and what increases were appropriate, for a new tenancy or a capital improvement. Requests for hardship increases were being processed, as were requests for rent reductions because of reduced services.

Agg -

*1:8. Rent
control was
not working*

After a series of consultant and task force studies reached the conclusion that rentals

had to be increased to protect the economic life of the City's housing, the City administration did not suggest an easy-to-administer program of periodic moderate increases. It attempted to demonstrate that "the brightest and the best" statisticians, economists and "urbanologists" could develop a system that would do the job and be fair to everyone. It was assumed that such a complicated system could in fact be administered. The MBR law was enacted by the City Council in 1970.

Alexander Pope's apt description of what happened next is found in the Dunciad:

"Then rose the seed of Chaos, and of night
to blot out order and extinguish light"

After a year-long study of the implementation of the MBR system by the New York State (Scott) Commission to Make a Study of the Governmental Operations of New York City, its executive director concluded that the MBR system was an "administrative disaster", and issued a major report cataloging the failures in implementation.

This Court has heard testimony about the MBR system. In general, no-one seems to be happy with it. The City Council tried to repeal it in 1973. The most common criticisms of how MBR operates are as follows:

1. The system contemplated increases tied to moderate cost increases of the 1950's and early 1960's. It does not and cannot reflect the rapid cost increases of the late 1960's and 1970's.
2. In an attempt to enact the 1970 legislation, people who should have known better overpromised the benefits the law would bring to landlords and tenants. When the benefits did not materialize, the subsequent reaction made it less likely for MBR to work.
3. The MBR system might have worked if it had been established as a totally new system with two years for implementation. It could not be implemented on top of an existing system by employees who had to administer an existing law.
4. The MBR system could never have worked because it was too complicated.
5. Everyone assumed that the "technology" (in the broadest sense) was available. In fact, we do not have the technology to work such a complicated system for so many units, within present budgetary parameters.
6. The implementation of MBR was sabotaged by officials in HDA, either by misfeasance or by nonfeasance.

7. The MBR system has never worked, is not working, and can never be made to work.

8. The MBR system is so non-functioning that the courts have to replace it periodically by ordering interim across-the-board rent increases. If this pattern, having existed for five years, will be continued in the future, then we do not need MBR — and it should be replaced by a simpler system for annual increases.

9. Except in special cases, tenant requests for rent reductions for improper landlord behavior or reduced services are not processed in timely fashion.

10. Except in special cases, tenant requests to stop rent increases because of landlord failure to comply with housing codes or to provide essential services, are not processed in a timely manner.

11. Except in rare cases, property owner requests for hardship increases, capital improvements, protests, rent determinations, etc. are not processed in a timely manner.

12. Neither landlords nor tenants can get information in a timely manner as to what the rent for any apartment was, is or will be in the future under MBR.

13. While some people will defend what the MBR system was supposed to do, no-one at the present time will defend the existing system.

Moreover, the administrator of Housing and Development Administration of the City of New York the agency charged with administering the MBR system testified that administering the MBR presented "a very, very, odious administrative problem." (Starr testimony at hearing.)

The MBR law, as a "system" of regulating rents and housing has been upheld, as was the earlier rent control law. Part of this regulatory system was the potential for additional increases in certain situations. An examination of the administration of this law, however, shows an overly-complicated system of regulation.

The testimony and exhibits at the trial established without contradiction or dissent that the administration of these laws has resulted in wholesale deprivation of property without due process of law, as well as denial of equal protection.

The utter collapse in the administration of these laws has made such procedures to protect property rights of both landlords and tenants as hardship applications and MBR protests a mockery. Literally years of delay and total inaction in processing remedial applications under the

12?

A(9)7.

laws has become the rule rather than the exception. A rent gap approximating 750 million dollars has led to a deterioration in housing units, and enforced total abandonment of valuable property on an unprecedented scale. There have not been funds to correct violations. The City of New York is out some 600 million dollars in defaulted real estate taxes at a moment in its financial situation when every dollar is needed. The defendants and those similarly situated have been deprived of property without remedies that constitute the essence of due process and equal protection. Tenants have suffered inconvenience and hardship in many instances. A line of decisions from courts at all levels has indicated growing impatience and concern.

Under all of these circumstances, the conclusion is inescapable that laws that were constitutional ab initio have now become unconstitutional in their administration. Boddie v. Connecticut, supra. An enlightening analogy is to be found in two decisions of our Court of Appeals regarding the constitutionality of a condemnation law. In the first decision the Court of Appeals reversed an Appellate Division holding that a law providing for condemnation of some of the surface transportation lines was unconstitutional. The Court of Appeals held it to be constitutional. The matter reached the Court of Appeals again some years later when the City had failed to make certain payments to the condemnee. At that point, the Court of Appeals warned that although it had originally upheld the constitutionality of the taking, the City's subsequent conduct in administering the ancillary protections to the condemnee was "verging" on making what had been constitutional on its face, unconstitutional as a result of its subsequent administration. In Re Fifth Avenue Coach Lines, Inc., 18 New York 2d 741. And so here, we face a situation where laws originally constitutional have collapsed in follow-through to the point that due process can no longer be said to exist. It is incongruous that rent control laws that were enacted as necessary to cope with a housing crisis, have now in large measure become responsible for the exacerbation of the crisis they were designed to correct.

In summary, the tactic of boiler shut-downs resorted to by defendants to dramatize their problems is legally impermissible and a potential threat to tenants' welfare, and such conduct is permanently enjoined. The plaintiff's motions to dismiss various of the counterclaims are granted in accordance with this opinion. Defendants' motion to amend to conform to the proof and thus raise the constitutional questions dealt with herein is granted. The laws recounted which underlie

AKB

the systems of rent control are found to have become unconstitutional as administered, and are declared to be unconstitutional.

Under the circumstances, this Court may grant any type of relief within the broad jurisdiction conferred upon it by Civil Court Act § 110 (c) appropriate to the proof that the aforesaid statutes are unconstitutional. However, the implementation of this decision in so far as it declares said laws to be unconstitutional will be stayed for a period of 60 days to afford an opportunity to plaintiff and other appropriate authorities to present a plan for administering said laws so as to cure the constitutional defects outlined herein. Settle order.

BERNARD KLIEGER

Judge

USA 22a-475
(ED. 4-23-71)

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

A

ID



STATE OF NEW YORK
TEMPORARY STATE HOUSING RENT COMMISSION

FPI-MI-4-B-74-308-2001

E-7003

ex / ev
7/19/58 King

Docket No.

ORDER GRANTING CERTIFICATE OF EVICTION

Address of housing accommodations: (Number and Street) (Apartment No.) (City, Zone No., and State)
575 East 168th Street 1 Bronx, New York

MAILING ADDRESS OF LANDLORD:

NAME William J. Davenport
NUMBER AND STREET c/o Wilfred A. Mais, Jr., Esq.
2300 Leventh Avenue
CITY, ZONE NO., AND STATE New York, New York

MAILING ADDRESS OF TENANT:

NAME Albert King
NUMBER AND STREET c/o Aaron Malnick, Esq.
910 Brook Avenue
CITY, ZONE NO., AND STATE Bronx, New York

After consideration of all the evidence in the record and upon the grounds stated in Section (55-1) of the Regulations, the Local Rent Administrator finds that, subject to the conditions stated below, eviction or removal of the tenant is not inconsistent with the purposes of the Emergency Housing Rent Control Law of 1950, and that a Certificate of Eviction should be issued.

Therefore, it is ordered that a Certificate of Eviction be, and it hereby is, issued, authorizing William J. Davenport to pursue his remedies at law for the removal or eviction of the above named tenant from the housing accommodation described above.

CONDITIONS

The purpose for which eviction of the tenant is authorized is: For personal use and occupancy by the landlord, William J. Davenport and his immediate family.

BEST COPY AVAILABLE

Court action to remove or evict the tenant shall not be commenced sooner than 3 months from the date of this order

NOTICE TO LANDLORD: This certificate shall not be used in connection with any action or proceeding to remove or evict the tenant unless such removal or eviction is sought for the purpose specified in this certificate.

In the event that your intentions or circumstances so change that the housing accommodation, possession of which is sought, will not be used for the purpose specified in this certificate, the certificate shall thereupon be null and void. You must thereupon, immediately notify the Local Rent Administrator in writing and surrender this certificate for cancellation.

NOTICE TO TENANT: This certificate does not order you to move, but only authorizes court action to be brought for your eviction or removal. The issuance of this certificate does not affect your rights under any present rental agreement.

I hereby certify that the attached document is a true copy of a registration statement, or of an order, filed with this office, or which I have the legal custody. The acceptance of a registration statement, and the certification thereof, does not mean that this office certifies to the correctness of the various statements made therein.

Issued _____

7/13/55

Date

Ralph W. Woodward
LOCAL RENT ADMINISTRATOR

Ralph W. Woodward
Local Rent Administrator

FORM C-50

B(a)1

ON STATUTORY DECONTROL

Docket No.

Address of housing accommodation: 575 S. 11th St. Apt. No. 1 City and Zone No. BCR: A 56

MAILING ADDRESS OF LANDLORD:

NAME Winfred J. Thompson

NUMBER AND STREET 975 5th St

CITY, ZONE NO., AND STATE Boston N.Y.

MAILING ADDRESS OF TENANT:

NAME George Gowers

NUMBER AND STREET 275 S 16th ST.

CITY, ZONE NO., AND STATE BROOKLYN 56 11X

INSTRUCTIONS: Within 30 days following the date of first rental of such accommodations after decontrol an original and two copies of this report *must* be filed with the Local Rent Office by delivery or mailing. Before filing the report, be sure to sign it and have the original sworn to before a Notary Public or other person authorized to administer oaths. (Section 42 of the Regulations.)

The Emergency Housing Rent Control Law, as amended in 1955, removes the following housing accommodations from control:

Housing accommodations which are rented after April 1, 1953 and have been continuously occupied by the owner thereof for a period of one year prior to the date of renting; provided, however, that this paragraph shall not apply where the owner acquired possession of the housing accommodation after the issuance of a certificate of eviction pursuant to the Rent and Eviction Regulations within the two year period immediately preceding the date of such renting, and provided, further, that this exemption shall remain effective only so long as the housing accommodations are not rented for other than single family occupancy. [Section 2(2)(h) of the Act; Section 9(11) of the Regulations.]

Housing accommodations in one- or two-family houses which become vacant on or after April 1, 1953, provided, however, that this exemption shall remain effective only so long as the housing accommodations are not rented for other than single family occupancy. [Section 2(2)(i) of the Act; Section 9(12) of the Regulations.]

Housing accommodations (not otherwise exempt or excluded from control) in two-family houses occupied in whole or in part by the owner thereof, and in one-family houses whether or not so occupied, on and after July 1, 1955, provided, however, that this exemption shall remain effective only so long as the housing accommodations are not rented for other than single family occupancy. [Section 2(2)(j) of the Act; Sections 9(13) and 9(14) of the Regulations.] NOTE: Applicable only to Nassau County and to those cities and towns in Monroe, Oneida, Onondaga and Schenectady counties which have not elected to continue or reestablish controls over such housing accommodations.

PART A

(Complete this Part and Part B, C or D, whichever may be applicable)

The maximum rent for the above described housing accommodations immediately prior to the date of the exemption was \$ 100.00 per month.

2. The accommodations were first rented to the tenant referred to above on 5-7-71 16 1957.

3. The rent first charged the tenant was \$ 200 per month

4. The following additional services or equipment were supplied to the tenant (If none were supplied, write "None.") :

FORM 42 (Rev. 6-55)

(over)

$$B'(a)2a''$$

CLOSED

MAR 3 - 1964

Requested
2/27/64
Requested

MAR 3 - 1964

⑤ → N-21

Insp

MAY 11 1964 4/23/64

⑤ → N-36
7/23/64

JUL 27 1964

5-N-36A-XXV each

NOV 10 1964 11/14/64

④ → N-21

DEC 11 1964

⑤ → 0-36
12/9/64

CLOSED



B(a) 3



THE CITY OF NEW YORK
CITY RENT and REHABILITATION ADMINISTRATION

Office Memorandum

TO : Mrs. Mary Johnson, AD Supervisor
FROM : Gerald P. Halpern, District Director
SUBJECT: 575 East 168 Street

DATE: July 3, 1963

GPH

Registrations for various apartments in this building indicate a profusion of decontrol reports (see below) which apparently were based on alleged owner occupancy. The filing dates indicate a probability that the claimed year of occupancy as to some apartments overlap others. Please requisition all relevant files and review for possible AD action to determine whether any of the DR's should be rejected.

Following is a list of the dockets involved and an eviction docket which may provide information as to the landlord's residence.

<u>Apartment #</u>	<u>DR #</u>	<u>Date</u>
7	9261	March 27, 1962
6	5420	January 9, 1959
5	6643	January 28, 1960
2	7855	January 3, 1961
1	3974	November 27, 1957 - Warehouse
3	E-13947-8	March 14, 1962

GPH/gm

*Open AD
5 units
mf*

*2-1D226
Thin
2-1D225*

Open AD-5 units

apts 1, 2, 5, 6, 7

Return to me
ml

Full packets &
Keys on there
ml.

B(a) 4

575 E. 168 St.
apt. Various.

OUR NEW ADDRESS
260 East 161st Street
Bronx, New York 10451

19CM 8408/09-Elbette

105-2600

SEP 21 1967

Wm. J. Davenport

575 E. 168 St.

Bronx 56-244

JE-2017



THE CITY OF NEW YORK
CITY RENT and REHABILITATION ADMINISTRATION

260 E. 161 St.

District Office
1910 Arthur Avenue
Bronx 57, New York

Your application has been received and given the docket number appearing on the other side of this card. All documents hereafter filed by you with this office relating to this case must bear this docket number.

Applications are considered in the order of their receipt. It is not necessary to write, phone or call in person to inquire about the status of this matter.

Please keep this card for future reference.

2002248 thru 2252

Harold Halper

District Rent and Rehabilitation Director

NOTICE
FORM N-14

B(a)5

Apt #1 - DR-3974 - from 10/6/55 - 9/16/57
See E-7883 - (less than 2 yrs)

Apt #2 - DR-7855 - from 12/1/57 to 12/1/60.
(Prof - Res rent) \updownarrow overlap

Apt #5 ~~of~~ DR-6643 from 12/16/58 to 1/5/60

Apt #6 - Turn Room rents in 1958 -
DR-5420 - from 9/15/57 to 12/15/58

Apt #7 - DR-9261 from 1/1/61 to 3/5/62

2CM- ~~8408~~ 8408 + 9 on appts 4 + 8. Check
same.

5 out of 8 appts decontrolled.

| DR-3974 - ~~cont.~~
from 10/6/55 to 9/16/57

E dacket verifies
that 2 yrs
mp

B(a)6



THE CITY OF NEW YORK
CITY RENT and REHABILITATION ADMINISTRATION

260 East 161st Street

21D-2248

Docket No.

ORDER DETERMINING FACTS OR FIXING MAXIMUM RENT (Section 35)

Address of housing accommodation: **575 East 163th Street** (Number and Street) **No. 1** (Apartment No.) **Bronx, N.Y. 10450** (Borough and Zone No.)

MAILING ADDRESS OF LANDLORD:

NAME **Wm. J. Davenport**
Marshall H. Kozinn, Esq.
NUMBER AND STREET **224 East 149th Street**
Bronx, N.Y. 10455
CITY, ZONE NO., AND STATE

MAILING ADDRESS OF TENANT:

NAME **Grace Watts (apt 1)**
NUMBER AND STREET **575 East 163th Street**
Bronx, N.Y. 10456
CITY, ZONE NO., AND STATE

After consideration of all the evidence in the record and upon the grounds stated in Section 35 of the Regulations, the District Rent and Rehabilitation Director [only boxes marked (x) apply]

1. ☐ Determines that the housing accommodation is subject to the Regulations as of , 196
2. ☐ Determines that the housing accommodation is exempt from the Regulations so long as the commercial or professional use thereof shall continue.
3. ☐ Determines that the housing accommodation is not subject to the Regulations by reasons of the provisions of Section 2 f() thereof.
4. ☐ Determines that the housing accommodation is exempt from the Regulations by reason of the provisions of Section 2 g() thereof.
5. ☒ Determines pursuant to subsection a thereof that the rent on **July 15, 1963**, ~~196~~ was \$ **64.95** per **month**, which amount is established as the maximum rent for the housing accommodation as of **July 15**, 196 **3**.
6. ☐ Establishes pursuant to paragraph c thereof that the rent on , 196 was \$ per , based upon landlord's failure to comply with the requirements of Section 35, which amount is the maximum rent for the housing accommodation as of , 196
7. ☐ Establishes the maximum rent pursuant to paragraph thereof at \$ per , as of , 196 , which amount is the maximum rent for the housing accommodation.
8. ☒ Determines that the dwelling space, essential services, furniture, furnishings and equipment required to be provided with the accommodation are as indicated in the reverse side of this order.
9. ☒ Directs the landlord to refund to the tenant within 30 days after this order shall become final all rent collected by the landlord in excess of the maximum rent established by this order for a period not exceeding two years prior to the date indicated below.
10. ☒ Other: **Maximum legal rent includes new 14 cu. ft. refrigerator, new range, rewiring.**

NOTE: Landlord's Report on Statutory Decretal DL-3974 is revoked.

Issued:

DEC 11 1964

Maximilian Gonzalez
District Rent and Rehabilitation Director

ORDER FORM 0-36

B(a)7

Protest Attorney

KAVAREK

Senior Attorney

Douglas

PROGRESS SHEET

1. Date of assignment of Protest by Senior Attorney 5/5/65
2. Date of review of record by Protest Attorney _____
3. Date and nature of first action taken _____
(For example, Notice of conference mailed,
inspection request of DRO, etc.)
4. Date of conference, if any, and duration thereof _____
5. Date of submission of final order to Sr. Attorney _____
6. Date of mailing of final order 12/16/65
(This information furnished
by Docket Section)

* * * * *

MAILING OF COPIES OF ORDERS. If either party appears by attorney envelopes should be addressed to the party, c/o his attorney at attorney's office address. The attorney who appears on the protest, where there has been a change of attorneys, is the proper one to be notified. Prepare envelopes for:

Handwritten:
Date
Dec 30

B(a) 8

JUDGE PIERCE

74 CIV. 5146

NOV 22 1974

Date Filed.....

Each PLAINTIFF and DEFENDANT shall be listed.

JURISDICTION

1. () U.S. Dist. Ct. () U.S. Dist. Ct. () Fed. Quest. 4. () Diversity

2. () Other, Specify Statute..... Civil rights - sec. title 42 U.S.C. title 28

3. () Class Action..... () Yes (X) No

Specify general nature of action and amount in suit:

On or about 1973, defendant, State of New York, State has issued orders restricting the use of the property in violation of the mandates of law. In consequence the defendant, State of New York, has deteriorated seriously the plaintiff's property, causing irreparable damages against defendant greater than the value of the plaintiff's property. Total Amount \$ 75,000.00.

RELATED CASE(S), IF ANY.

1. () Case No. L. N. 1974 Docket No. 74 CIV. 3998

2. () Property included in an earlier docketed pending suit.

3. () Same issue of fact or grows out of the same transaction, regulation or statute.

4. () Validity or infringement of the same patent, trademark or copyright.

CA 100-1

Form 10 (a) In ONE category, ONLY:

- 1. () Insurance
- 2. () OTHER Contract
- 3. () Admiralty & Maritime-
Personal Injury
- 4. () Admiralty & Maritime-
OTHER than P.I.
- 5. () Other Personal Injury
and S.W.L.A.
- 6. () Arbitration

- 7. () Civil Rights
- 8. () Habeas Corpus & Other Post Conviction
Petitions
- 9. () Labor laws
- 10. () Patent, Trademark & Copyright
- 11. () Income Tax
- 12. () Stockholder suits
- 13. () Securities laws & S.E.C. suits
- 14. () General Civil (all other)

OTHER CONTRACT state type of contract:

And if not a F.R.D. or S.E.C. then sentencing Judge

Form Name

William J. Davis
Signature of Attorney of Record

Is ~~Signature~~ Attorney of Record admitted to
practice in this District?

() YES

Case No. CIV. 5146

Vol. 19 7

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORDER TO RECONSIDER AND REARGUE
THIS BEING THE ORDER OF THE
COURT IN CIV. 5146

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S. D. OF N. Y. *M*

ENDORSEMENT ORDER

The motion herein, seeking reconsideration of this Court's order of April 4, 1975 which remanded this case (74 Civ. 5146) to the Civil Court of the City of New York, County of Bronx, is not timely. See Local Rule 9(m).

However, even if deemed to be timely filed, the motion to reconsider or reargue would be denied. The motion is therefore denied in all respects.

SO ORDERED.

Dated: New York, New York
June 2, 1975

W. L. ...

U.S.D.J.

B(a) 11

State of New York, County of

ss :

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within notice of trial with statement on

attorney(s) for
herein, at his office at

during his absence from said office
~~strike out either (a) or (b)~~

(a) by then and there leaving a true copy of the same with
his clerk; partner; person having charge of said office.
(b) and said office being closed, by depositing a true copy of same, enclosed in a sealed wrapper directed to said attorney(s), in the office letter drop or box.

Sworn to before me, this
day of 19

Index No. HP 134/74

Civil Court of the City of New York
County of Bronx
Housing Part

HOUSING AND DEVELOPMENT ADMINISTRATION
OF THE CITY OF NEW YORK,

Plaintiff

against

WILLIAM J. DAVENPORT,

Defendant

Notice of Trial

WITH STATEMENT

State of New York, County of

ss :

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within notice of trial with statement on

attorney(s) for
at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within New York State.

Sworn to before me, this
day of 19

W. BERNARD RICHLAND
CORPORATION COUNSEL
Harold M. Shultz, of counsel
Attorney(s) for Plaintiff

Office & P.O. Address:
Housing Litigation Bureau
125 Church Street
New York, N.Y. 10007
Phone No.: (212) 349-0870

Admission of Service

Service of a notice of trial with statement of which the within is a copy, admitted this day of 19

Attorney(s) for

B(b)-1-

Cal. No.

NOTICE OF TRIAL WITH STATEMENT

Index No. HP 134/74

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF

HOUSING PART

HOUSING AND DEVELOPMENT ADMIN-
ISTRATION OF THE CITY OF NEW
YORK,

NOTICE FOR May 28, , 1975

Trial } By jury ☐
 } Without jury ☒

Filed by Attorney for Plaintiff...

Date Summons served 11/7/74

Date issue joined 12/4/74

NATURE AND OBJECT OF ACTION (Specify for each cause of Action)

Plaintiff

WILLIAM J. DAVENPORT, ^{against}

	Class A	Class B	Class C	Reg
Civil Penalties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recoupment	<input type="checkbox"/>			
Lien Foreclosure	<input type="checkbox"/>			
Injunction	<input checked="" type="checkbox"/>			
Restraining Order	<input type="checkbox"/>			

Other Relief

Amount Demanded \$ 97,820 plus continuing statutor
penalties.

Defendant(s)

PREMISES: 575 E. 168th Street, Bronx, N.Y.

Rule 16 of the Rules of the Civil Court of the City of New York, 22NYCRR 2900.16, requires the endorsement of the following statements on the face of the notice of trial where all parties appear by attorney:

- (1) ☐ In compliance with an adverse party's demand or a court order, the bill of particulars with proof of its service have been filed with the clerk; or
- ☒ No demand or order for a bill of particulars has been made; or
- ☒ (Civil Penalty actions) No motion for a bill of particulars has been granted.
- (2) ☐ All preliminary proceedings allowed by any applicable rule or statute have been completed by all parties; or
- ☒ There has been a reasonable opportunity to complete all preliminary proceedings allowed by any applicable rule or statute; or
- ☐ The parties do not intend to conduct any preliminary proceedings allowed by any applicable rule or statute; or
- ☒ (Civil Penalty actions) No motion to allow preliminary proceedings has been granted.
- (3) ☒ Plaintiff hereby applies for a preference in the trial of this action pursuant to NYCRR 2900.14(a).

W. BERNARD RICHLAND
CORPORATION COUNSEL

Harold M. Shultz of counsel
Attorney for Plaintiff

Office & P.O. Address:

Housing Litigation Bureau

125 Church Street

New York, N.Y. 10007

Phone No.: (212) 319-0870

WILLIAM J. DAVENPORT

Defendant(s)

Office & P. O. Address

324 Allaire Ave.

Leonia, N.J. 07605

Phone No.:

(201) 944-1174

B (b) -2

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX : HOUSING PART

-----X
HOUSING AND DEVELOPMENT ADMINISTRATION
OF THE CITY OF NEW YORK,

: Index No. HP 135/74

Plaintiff, :

-against-

: ORDER TO CORRECT
AND JUDGMENT

WILLIAM J. DAVENPORT,

:

Defendant,

Premises:
: 575 E. 168th Street
Bronx, New York

-----X

The issues in the above-entitled action having duly come on for trial before the Honorable David Davila Hearing Officer on May 28, 1975, and W. Bernard Richland, Corporation Counsel, Harold M. Shultz and Jill S. Fassler of Counsel appearing for plaintiff; and William J. Davenport defendant appearing in his own behalf; and the issues having been duly tried; and the Honorable David Davila having rendered his decision on May 28, 1975; it is hereby

ORDERED that defendant William J. Davenport repair, remedy and correct all violations as listed on the annexed schedule of violations within thirty (30) days after service of this Order upon defendant, ~~and that upon failure to do so defendant William J. Davenport shall be liable to all penalties for contempt of court; and it is further~~

B(6) 3.

ORDERED, ADJUDGED and DECREED that plaintiff recover of defendant William J. Davenport the sum of twenty thousand, eight hundred fifty dollars (\$20,850) for failure to correct two class C violations, from April 6, 1974 to May 28, 1975, item numbers 163 and 173; and it is further

ORDERED, ADJUDGED and DECREED, that plaintiff recover of defendant William J. Davenport the sum of twenty thousand eight hundred fifty dollars (\$20,850) for failure to correct two class C violations from April 6, 1974 to May 28, 1975, item numbers 180 and 181; and it is further

ORDERED, ADJUDGED and DECREED that plaintiff recover of defendant William J. Davenport the sum of nineteen thousand eight hundred fifty dollars (\$19,850) for failure to correct two class C violations from April 26, 1974 to May 28, 1975, item numbers 182 and 183; and it is further

ORDERED, ADJUDGED and DECREED that plaintiff recover of defendant William J. Davenport the sum of thirty-five thousand three hundred and seventy dollars (\$35,370) for failure to correct 8 class B violations item numbers 158, 159, 161, 167, 168, 170, 177 and 174;

Making in all the sum of ninety six thousand nine hundred twenty dollars (\$96,920) and that plaintiff have execution therefore.

B(6) 4

Dated:

7/9/75

ENTER:

H

DEK

J. C. C.

Dated:

7/9/75

Phoenix Ingraham

CLERK

Phoenix Ingraham

B(6) 5

INTERROGATORY

In the proceedings 71 CIV 4263 , now is

THE UNITED STATES DISTRICT COURT FOR THE SECOND SOUTHERN DISTRICT

OF

NEW YORK

Wherein William J. Davenport, plaintiff questions

and

Benjamin Altman, as Commissioner of New York City Rent Control, defendant

and

Daniel W. Joy, as General Counsel of New York City Rent Control, defendant

and

* Harry Michelson, as Litigation Attny, of New York City Rent Control,
defendant

are herein to answer identical questions and questionnaires.

CIV 1

Interrogatory for proceedings 71 Civ 4263, in the UNITED STATES DISTRICT COURT FOR THE SECOND SOUTHERN DISTRICT of NEW YORK, in a action between WILLIAM J. DAVENPORT, plaintiff - v. BENJAMIN ALTMAN, DANIEL JOY, and HARRY MICHELSON, & occupants and tenants of 575 E. 168 St., Bronx, defendants.

All of the following questions are in reference to State of New York Temporary State Housing Rent Commission dockets numbered DR-3974, DR-5420, DR-6643, and DR-7855. Which in the instant litigation plaintiff specifically charges have been contrary to the provisions of the New York State Rent Control Laws of 1954 through 1961, wrongfully subjected to administrative proceedings, claims, and allegations before the courts by yourself and/or your predecessors. All of which is contrary to further provisions of Title 28, Title 42 and Title 18 of the United States Codes.

All of the following questions should be answered in adequate detail or if no answer is made, it should be so stated, if possible giving the reason.

To: Benjamin Altman, individually,
: Daniel Joy, individually,
: Harry Michelson, individually.

AND IDENTICAL "ZEROED"
+ SIGNED INDIVIDUALLY.
(EX # 1)

1. What is your name, address, official function, official function as of September 30, 1971, and how long had you served prior to Sept. 30, 1971 in that function.

FILED 1957 thru 1961 incl.

2. Are the New York State Housing Rent Commission dockets in reference which are DR-3974, DR-5420, DR-6643, and DR-7855 classifiable and/or properly classified (in your opinion) as STATUTORY EXEMPTIONS under the New York State Rent Control Law as amended 1954 ; or are they applications for exemption under New York City Regulations known as N.T.C. Public Law # 20 of 1962.

3. Are there differences between the New York State Rent Control Law amended 1954 section 2(2)(H) and the later provisions of the rent control regulations known as New York City Public Law No. 20 of 1962 (a.k.a. Title Y, Chap. 51, N.Y.C. Adm Code), section 2(f)(11); and if so which provisions of law applies to the stated dockets?. Why?.

(a)

(b)

(c)

I state the above to be true answers.

L.S.

PG C(9) 1

Harry Michelson

4. What are the dates of filing, and on what date was the docket closed by the New York State Commission of the following noted dockets, and are they notices to the New York State Commission; or applications to the New York City Rent Administration?

(a) DR-3974 . .

(b) DR-5420 . .

(c) DR-6643 . .

(d) DR-7855 . .

5. Do applications for decontrol of the apartments involved in the noted docket numbers exist? If so please note their docket numbers and whereabouts.

6. If such applications to the New York City Rent Administrator exist, why are they not signed by plaintiff hereto, and contained in the Rent Administration records which are hereto in contest?

7. Has the New York City Rent Administrator, or the New York State Rent Commission charged any fraud to exist in the landlord's sworn and filed notices of the above dockets?, (b) if so, is it alleged to be intentional or accidental, and what statements are involved?

(a)

(b.)

8. Who made the above charge?

9. Has any NOTICE of such CHARGES, or any opportunity to reply in his own defense been provided landlord-plaintiff, where evidence and witnesses were exhibited and examined under oath with powers of subpoena provided the landlord either by the New York City Rent Administrator or the courts to determine the FACTS ?, If so by who on what date?

(a)

(b)

I state the above to be true answers.

L.S.

Harry Michelson

c(a)2

21 Sept 72

21 Sept 72

10. Has a charge of fraud by plaintiff as stated in question no. 7 been submitted to the courts as provided by the subject Rent Control Laws of the State of New York of 1961 and 1962 as follows:

"Whenever in the judgement of the commission any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of section ten of this act, the commission may make application to the supreme court for an order enjoining such acts or practices or for an order enforcing compliance with such provision. Whenever the commission has reason to believe that any person is liable to punishment under this subdivision, the commission may certify the facts to the district attorney of any county having jurisdiction of the alleged violation..... " ?.

11. Has any proof been exhibited, examined or subjected to trial that plaintiff-landlord did not in fact have occupancy as provided by law of the involved apartments for the entire period which he has claimed? if so specify what and when examined, and how examined.

See answers

(F) 4 + C(9)5

12. In reference to the involved dockets, has the claim or charge been made that plaintiff-landlord rented the subject apartments for other than single family occupancy by any Rent Administrator in any official paper or document?. If so specify what paper or document and where stated.

See Ans C(F) 4 + Specification 2(2)(h) on pg C(a)2a

13. Does the law applying to the exemptions involved hereto require either by provision of the New York State Law of 1954 or the New York City regulations of 1962 that the owner "RESIDE" in the subject apartment for a period of "TWO" years as a condition to exemption, or is there NO SUCH SPECIFICATION OF LAW?. If the answer is yes, state the provision of law.

I state the above to be true answers.

L.S.

Harry Michelson

C(a)3

12. Is the landlord-plaintiff lawfully responsible for acts and unlawful
conduct by tenants?, if so state the specification of law.

15. In all of the aforostated questions, if the docket reference is to an exemption by STATUTORY PROVISION of the New York State Rent Control Law of 1954, by what authority of law does the New York City Rent Administrator and Regulations of 1962 assume precedence to revoke or deny retro-effectively the previously lawful status of exemption as recognized by the New York State Temporary Housing Rent Control Commission?

See Ans C(F)5.

16. On May 1, 1962, the date of transfer of authority, were the stated dockets DR-3974, DR-5420, DR-6643, and DR-7855 open upon the desk of the New York State and then the New York City Rent Administrator, or in fact were they closed files in archives?

*Adm. Letter C@17 } contract, on this turn
answ C(F)5 } point of the involved law.*

17. Did the New York City Rent Administrator revoke the prior statutory exemptions of the subject dockets? ; or deny applications to him which were inclosed in these dockets? (b) In either instance specify the year and section or provision of law applicable and governing the administrative action.

18. Have you personally (a) made, (b) or caused to be made a complete and full examination of the New York State and New York City Rent Administration records relative to these New York State Rent Commission dockets DR-3974, DR-5420, DR-6643, DR-7855 and do you personally know the allegations of prior attorneys for the New York City Rent Administration as made before the courts to be totally derived from and consistent with a lawful and proper determination and finding of fact?

no action
no action

19. Has the New York City Rent Administrator's orders relative to dockets DR-3974 and DR-5420 effectively established grounds by which the landlord-plaintiff in this action should legally be held responsible in further actions at law to the tenants for triple damages for overcharges of rents, as a consequence of infraction by the tenants on the occupancy contract and requirements of law which in fact constitute an injury to the landlord-plaintiff?, explain.

*See ans
C(F) 6.*

I state the above to be true answers. L.S.
Harry Nicholson

20. Assuming a situation has occurred such as described or implied in question 19, what corrections have been effected by the New York City Rent Administrator since the inception by the New York City Rent Administrator of questions relative to the hereto at contest dockets to correct improprieties as indicated? If none have been made, then state what correction you feel is required by the New York City Administrator by law, or should be made. Add any explanation felt illuminating.

(a.)

(b.)

(c.)

21. After examining the records fully, is it your opinion that a series of apparently fraudulent claims have been advanced by the New York City Rent Administrator both as to law and fact relative to the stated dockets, and relative to administrative action thereto before the courts?

I,, have read and answered the preceeding questions, and provided answers which to the best of my knowledge, and information furnished me, are true.

L.S.

Harry Michelson

Sworn to before me, this

____ day of _____, 1972.

C(a)5

SIR: TAKE NOTICE that the within
is a copy of duly filed
and entered in the office of the Clerk of
..... County, on the
..... day of
19.....

Yours, etc.,

Attorney for
110 Church St., New York, N.Y. 10007

TO:

SIR: TAKE NOTICE that the within
..... will be presented
for settlement and signature herein to the
Hon.
one of the judges of the within named
Court, at
in the

..... on the
..... day of
19....., at M.
Dated,, 19.....

Yours, etc.,

Attorney for
110 Church St., New York, N.Y. 10007

TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. DAVENPORT,
Plaintiff

-against-

BENJAMIN ALTMAN, etc.,
Defendants.

ANSWERS BY HARRY MICHELSON,
DEFENDANT TO WRITTEN
INTERROGATORIES SERVED BY
PLAINTIFF

DANIEL W. JOY
General Counsel
Office of Rent Control

DEPARTMENT OF RENT AND HOUSING
MAINTENANCE
HOUSING AND DEVELOPMENT ADMINISTRATION

Attorney for Defendants

110 Church St., New York, N. Y. 10007

Personal service of a copy

of within
is admitted this day of
....., 19.....

HARRY MICHELSON, of Counsel
Tel. No. 566-5034

C (6) 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

24 70

-----X
WILLIAM J. DAVENPORT, :
 :
Plaintiff, :
 : 71 Civ 4263
-against- :
 :
BENJAMIN ALTMAN, etc., :
 :
Defendants. :
-----X

ANSWERS BY HARRY MICHELSON, DEFENDANT,
TO WRITTEN INTERROGATORIES SERVED
BY PLAINTIFF

Answer to Interrogatory No. 1:

Harry Michelson, Room 325, 110 Church Street, New York
New York, Deputy Chief Litigation Attorney, now and as of
September 30, 1971 and for several years prior to September 30,
1971.

Answer to Interrogatory No. 2:

Upon information and belief, the numbers DR 3974,
DR 5420, DR 6643 and DR 7855, are file numbers referring to
forms entitled "Landlord's Report on Statutory Decontrol,"
which were unadjudicated filed claims of decontrol by the
plaintiff of certain housing accommodations to which the New
York State Rent Control Law, known as the Emergency Housing
Rent Control Law, was applicable prior to May 1, 1962, and on
and after May 1, 1962, the New York City Rent Control Law,
known as the City Rent and Rehabilitation Law, enacted as
Local Law No. 20 for 1962, has been applicable to the said

1957
1961

ex parte facts!

C(b)1

claims of decontrol filed under the above file numbers

Answer to Interrogatory No. 3:

Upon information and belief, for purposes material to this action, Section 2(2)(h) of the State Rent Control Law and Section Y51-3.0, para. e2(1)(3) of the City Law, and the counterpart State Rent Regulation, Section 9(11), and City Rent Regulation Section 2f(11) are generally and substantially the same, and that the State law and regulations applied prior to May 1, 1962, and the City Law and Regulations have applied on and after May 1, 1962. *The question on detail is not answered.*

Answer to Interrogatory No. 4:

Upon information and belief, the filing dates are as follows:

<u>File No.</u>	<u>Filing Date</u>
DR 3974	October 15, 1957
DR 5420	January 6, 1959
DR 6643	January 6, 1960
DR 7855	December 2, 1960

Upon information and belief, no dockets were opened or closed for any of the four filed reports by the State Rent Commission; the papers filed were entitled "Landlord's Report on Statutory Decontrol" and constituted unadjudicated claims by the landlord to decontrol; the reports were filed without adjudication and subject to later evaluation and adjudication of the truth of the statements contained in the reports.

Answer to Interrogatory No. 5:

Upon information and belief, in 1963 upon the initiative of the District Rent Director of the New York City Rent and

Rehabilitation Administration, the said landlord's Reports of Statutory Decontrol were treated as applications for decontrol, and for that purpose the District Rent Director opened fact finding proceedings to which he was assigned docket numbers 2AD 2248-2252 to investigate what appeared to be inconsistent claims made by the plaintiff-landlord and to determination after notice to the plaintiff-landlord the validity of his claims of decontrol. The files are presently in the control of the New York City Office of Rent Control.

Answer to Interrogatory No. 6:

See answer to interrogatory number 5.

Answer to Interrogatory No. 7:

Upon information and belief, no criminal charges were filed, but administrative determinations were based in substantial part upon findings in substance of lack of credibility of the plaintiff-landlord's conflicting claims made in separate reports of decontrol.

Evasive! the question was "any charges"?

NO CONFLICT IS IN FACT THEREIN.

Answer to Interrogatory No. 8:

See answer to interrogatory number 7.

Answer to Interrogatory No. 9:

Upon information and belief, landlord-plaintiff was fully notified of the administrative proceedings, and was actually represented by attorneys at the two levels of administrative proceedings, and the two further levels of judicial proceedings, and the landlord-plaintiff was entitled

PURE UNTRUTH

NO PROCEEDINGS!

in the two levels of administrative proceedings to rebut all adverse data in the record, and plaintiff-landlord did submit for consideration all the data and arguments he had to offer through his attorneys.

Answer to Interrogatory No. 10:

Upon information and belief, no criminal charges were filed.

Answer to Interrogatory No. 11:

Upon information and belief, in District Rent Office administrative proceedings, under docket numbers 2AD 2248-2AD 2252, and further administrative protest proceedings, under docket number CPLA 9658-9641, there was documentary evidence and other data of which plaintiff's attorneys had notice, in which proceedings he was represented by attorneys, and in which proceedings he had an opportunity through his attorneys to rebut adverse data in the record.

Answer to Interrogatory No. 12:

Upon information and belief, based upon an incomplete study of relevant records, no claim was made that plaintiff-landlord rented any apartment for other than single family occupancy although on official inspection, several apartments were found to be occupied for other than single family occupancy.

Answer to Interrogatory No. 13:

The two year residence requirement in the State law is found in Section 2(2)(h) of the Emergency Housing Rent Control Law [McK. Unconsol. Laws, Sec. 8582(2)(h)] and is

NONE - NOT TRUE - NO SUCH REQUIREMENT
SEE LAW SEC "B", or PG C(A)2a

also contained in New York City Law in Admin. Code, Sec. Y51-3.0, para. e2(1)(3).

Answer to Interrogatory No. 14:

In general, in some respects, a landlord may be responsible for unlawful occupancy by his tenants. However, no specific answer to this question is possible because the question is too broad and vague for a responsible answer.

This contradicts Adm paper of "ratemate" 12/16/65

Answer to Interrogatory No. 15:

Under the authority of New York State Law, Chapter 21 of the Laws of 1962 (McK. Unconsol. Laws, Section 8601, et seq.), and New York City Local Law No. 26 of 1962 (N.Y.C. Admin. Code, Chapter 51, Title Y), and particularly Sec. 1(6) of Chapter 21 of the Laws of 1962 (McK. Unconsol. Laws, Sec. 8606), the New York City rent control agency (formerly the New York City Rent and Rehabilitation Administration, and now the Office of Rent Control), is authorized in all respects to administer the rent control law and to do anything which the State rent authorities might have done prior to May 1, 1962, and to supersede any rules, regulations, orders, determinations and decisions of the State rent control authorities.

Answer to Interrogatory No. 16:

Upon information and belief, so far as appears, on May 1, 1962, the landlord's reports of decontrol bearing file numbers DR 3974, DR 5420, DR 6643 and DR 7855, had been turned over to the City rent agency from the State rent authorities, and at that time constituted unadjudicated claims of decontrol by the landlord-plaintiff.

FALSE See Adm letter C(6)

Answer to Interrogatory No. 17:

Upon information and belief, the New York City Rent Administrator adjudicated that certain of the landlord's claims of decontrol were invalid and that the landlord was not entitled to decontrol as to certain apartments. Action was taken in administrative proceedings bearing docket numbers 2AD 2248-2251, which were commenced in 1963 and concluded at the level of the District Rent Director by orders and determinations issued on or about December 11, 1964, and such actions were taken pursuant to City Rent Regulations Section 2f(11), and Section 36 and the corresponding statutory provisions, and were thereafter affirmed by the City Rent and Rehabilitation Administrator upon the plaintiff's protest appeal under Docket No. CPLA 9638-9641.

*Unsigned
ORDERS*

Answer to Interrogatory No. 18:

I have personally partially examined the files relative to decontrol reports bearing file numbers DR 3974, DR 5420, DR 6643, and DR 7855, and to the extent of my knowledge and information, I believe all of the allegations made before the courts by prior attorneys for the New York City Rent Administrator were totally or substantially derived from and consistent with lawful and proper determinations and findings of fact.

Answer to Interrogatory No. 19:

I do not know the answer to this question and I therefore express no opinion.

*The Administrator's
answer was the same! ?????????*

Answer to Interrogatory No. 20:

Upon information and belief, no changes were made, and none are required.

Answer to Interrogatory No. 21:

Upon information and belief, and based on a partial examination of papers in relevant files, in my opinion there have been no fraudulent claims advanced by or on behalf of the New York City Rent Administrator or his successor in any respect relative to matters involving file numbers DR 3974, DR 5420, DR 6643 and DR 7855, nor with respect to any administrative or judicial action in connection with such proceedings.

**Dated: New York, New York
July 24, 1972**

HARRY MICHELSON
HARRY MICHELSON

**STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)**

HARRY MICHELSON, being duly sworn, deposes and says that he is a defendant in the above-entitled action; that the foregoing answers to interrogatories are true to his own knowledge, except as to matters which are therein stated to be alleged on information and belief and as to those matters he believes it to be true.

HARRY MICHELSON
HARRY MICHELSON

**Sworn to before me this
24th day of July, 1972**

**LEWIS J. KATZ
Notary Public, State of New York
No. 21-7175795
Qualified in Kings County
Commission Expires March 30, 1974**

SIR: TAKE NOTICE that the within

is a copy of duly filed
and entered in the office of the Clerk of
..... County, on the
..... day of
19

Yours, etc.,

Attorney for
110 Church St., New York, N.Y. 10007

TO:

SIR: TAKE NOTICE that the within
..... will be presented
for settlement and signature herein to the
Hon.
one of the judges of the within named
Court, at

in the on the
..... day of
19, at M.
Dated,, 19

Yours, etc.,

Attorney for
110 Church St., New York, N.Y. 10007

TO:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**WILLIAM J. DAVENPORT,
Plaintiff,**

-against-

**BENJAMIN ALTMAN, etc.,
Defendants.**

**SUPPLEMENTAL ANSWER BY
HARRY MICHELSON, DEFENDANT,
TO WRITTEN INTERROGATORIES
SERVED BY PLAINTIFF**

**DANIEL W. JOY
General Counsel
Office of Rent Control**

**DEPARTMENT OF RENT AND HOUSING
MAINTENANCE
HOUSING AND DEVELOPMENT ADMINISTRATION**

Attorney for **Defendants**

110 Church St., New York, N. Y. 10007

Personal service of a copy

of within
is admitted this day of
....., 19

**HARRY MICHELSON, of Counsel
Tel. No. 566-5034**

*Supplementary
Answers by order of the court!*

C(C) 1

21 Sept 72

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WILLIAM J. DAVENPORT,

Plaintiff,

-against-

BENJAMIN ALTMAN, etc.,

Defendants.
-----X

71 Civ 4263

SUPPLEMENTAL ANSWER BY HARRY MICHELSON
DEFENDANT, TO WRITTEN INTERROGATORIES
SERVED BY PLAINTIFF.

1. This supplemental answer and my original answer, dated and verified July 24, 1972, is also made on behalf of defendants, Benjamin Altman and Daniel W. Joy.

2. Supplemental answer to Interrogatory No. 7:

Upon information and belief, the late Lord, William J. Davenport, was notified by the mailing of notices to his attorney, Marshall H. Kozinn, Esq., dated March 3, 1964 and July 27, 1964, of the reasons for proposed administrative determinations that certain apartments, previously claimed by Davenport to be decontrolled, did not factually satisfy the legal requirements for decontrol. The notices, of which copies are attached as Exhibits 1 through 10, offered Mr. William J. Davenport opportunities, through his attorney, to submit evidence in his own behalf and in opposition to the evidence in the record summarized in the notices.

3. Supplemental answer to Interrogatory No. 8:

Upon information and belief, the administrative proceedings under docket numbers 2AD 2248-2252 were commenced

upon the personal initiative of the District Rent Director of the Bronx District Rent Office of the New York City Rent and Rehabilitation Administration, between approximately July, 1963 and September, 1963, and preliminary investigation was begun about September, 1963 by examining and comparing the statements made by William J. Davenport in the various claims filed by him for decontrol of five separate apartments in premises 575 East 168th Street, Bronx, New York.

4. Supplemental answer to Interrogatory No. 9:

Upon information and belief:

(a) Notice of charges was given to William J. Davenport, in various ways including the notices dated March 3, 1964 and July 27, 1964 referred to in and annexed as part of the supplemental answer to Interrogatory No. 7, which notices were sent to an attorney representing Mr. Davenport.

FALSE

??
(b) The said notices dated March 3, 1964 and July 27, 1964 explicitly offered an opportunity to submit evidence on behalf of Mr. Davenport's position.

(c) The proceedings under Docket No. 2AD 2248-2252 were adversary in nature, as were all such proceedings before the New York City Rent and Rehabilitation Administration, pursuant to the Rent Control Law and Regulations.

TOTALLY FALSE!

NOT SEEN
(d) Specific notice of all evidence considered in the proceedings under Docket No. 2AD 2248-2252 was made available to the landlord Davenport, by the mailing of copies of adverse data to his attorney with an opportunity to answer and rebut, and constructive notice was also given by the general availability of the file for inspection by his attorney during the

BELIEVED UNTRUE.

??

pendency of the proceeding before the District Rent Office, and thereafter for preparation of a protest appeal and during the pendency of the administrative protest appeal to review the District Rent Director's determination.

(e) No oral hearing was held but the landlord was given an opportunity to be heard in the sense that he was entitled to be aware of, and was constructively aware of, all the adverse data in the record and was entitled to challenge any such adverse data. The landlord Davenport, on several occasions through his attorney, submitted data in his own behalf. In a letter dated November 18, 1964 from Mr. Davenport's attorney, the attorney stated that Mr. Davenport had no further or additional evidence to submit. A copy of the said letter dated November 18, 1964 is annexed hereto as Exhibit 11.

(f) The Rent Control Law authorizes the Rent Administrator in discretion to subpoena witnesses and documents, but the record shows no request was ever made for subpoenas on behalf of Mr. Davenport.

(g) Oral hearings were requested by the attorney for Mr. Davenport. Under the rent control regulations, oral hearings may be held in the discretion of the rent control officials when necessary but oral hearings were denied in this case as unnecessary in the circumstances of the case. Mr. Davenport, through his attorneys, continued to assert as error the refusal to afford him an oral hearing, and his contentions were rejected in an administrative appeal, as

NOT
ANNEXED
NOT
KNOWN
TO EXIST
50 UNTRUE

This
Contradicts
Law 4(4)
(Cmtb "B")

A not
existant
See Appeal
record C(c) 8

well as in judicial proceedings brought by Mr. Davenport through various attorneys in both Special Term of the New York Supreme Court and in the Appellate Division.

(h) The principal evidence upon which the District Rent Director found the Davenport claims of decontrol to be without merit were Mr. Davenport's own contradictory and conflicting statements made in the various reports of various claims of decontrol filed by him and other voluntary statements by him contained in the file of the proceedings before the District Rent Director. UNTRUE

Dec 11, 1964
(i) The determinations made by the District Rent Director denying decontrol were based solely upon papers contained in the file of Docket No. 2AD 2248-52, and the determination of the protests by Mr. Davenport was based solely on the papers contained in Docket Nos. 2AD 2248-9638-52 and CPLA/9641. The rationale of the protest determinations is set forth in detail in an order and opinion dated

Dec 16, 1965
December 16, 1965, a copy of which is annexed as Exhibit 12.

(j) The entire file of docket 2AD 2248-52 was available to Mr. Davenport's attorneys, and it either was or could have been examined by them when the proceeding was pending at the administrative level, and also in judicial review proceedings thereafter. ? .

NOT WAS
(k) The entire contents of the file of docket 2AD 2248-52 is also known personally to the plaintiff-landlord William Davenport, and Mr. Davenport presumably has a complete copy of the entire file which he obtained by a subpoena duces tecum in an unrelated action before U.S. District Court Judge Motley

in approximately August, 1971, and which file he again examined in the presence of U.S. Magistrate Schreiber in about October, 1971, after which last occasion your deponent personally delivered to Mr. Davenport copies of each of the papers in the said file which Mr. Davenport requested to be copied for him.

5. Supplemental answer to Interrogatory No. 11:

Upon information and belief, all of the data and evidence upon which the District Rent Director and the City Rent Administrator relied is contained in the files of Docket Nos. 2AD 2248-2252 and CPLA 9658-9641; that the determinations made were based upon consideration of the entire record; and that the original record before the District Rent Director consists of over 200 pages, approximately one-half of which contain data material to the District Rent Director's determination.

Dated: New York, New York
September 21, 1972

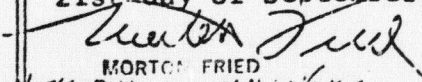

HARRY MICHELSON

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

HARRY MICHELSON, being duly sworn, deposes and says that he is a defendant in the above-entitled action; that the foregoing answers to interrogatories are true to his own knowledge, except as to matters which are therein stated to be alleged on information and belief and as to those matters he believes it to be true.


HARRY MICHELSON

Sworn to before me this
21st day of September, 1972


MORTON FRIED
Notary Public
No. 1073
Qualified in County of New York
Commission Expires March 29, 1973

J.S. 6 closed

no decision on motion to re-consider. BUT

trial held ??

Clerk McC. said keep J.S. 6 closed (7-25-75)

hold docket ----- until all matters are
decided on open tray.

Pl

WILLIAM J. DAVENPORT, SALOMA
DAVENPORT, his wife, WILLIAM WATTS,
GRACE WATTS,

"JOHN DOE", "RICHARD ROE", "JAMES POE",
and "BILLY BOE", the names of the last
four defendants being fictitious, true
names being unknown to plaintiff,
intending thereby to designate tenants or
occupants of the mortgaged premises.

Defendants.

SE 70 CIV. 3878

ad date:

ATTORNEYS

For plaintiff:

WILLIAM J. DAVENPORT
324 Allaire Ave.
Leonie N.J.

Paterson Mitchell Makins & Co.
688 Seventh Ave., NYC 10019 -

For defendant:

William Davenport - pro-se
324 Allaire Avenue
Leonie, N.J. 07605

STATISTICAL RECORD		COSTS	DATE	NAME OR RECEIPT NO.	REC.	
J.S. 5 mailed	x	Clerk	7/4/70	W. J. Davenport	15	15
J.S. 6 mailed	✓	Marshal	7/8/70	U.S. Treas	5	5
Basis of Action:		Docket fee				
Vio. of Civil Rights		Witness fees				
Action arose at:		Depositions				

Doc. Clk
Mr. Warren Friedman Unit 1
791 0134

BEST COPY AVAILABLE

PRO SE 70 CIV. 3878

U.S. Mutual Life Insurance Co. vs. William J. Davenport et al

DATE	PROCEEDINGS	Date Order Judgment Not
Sept. 4, 70	Filed petition and record on removal from Supreme Court Bronx County State of New York	
Sept. 28-70	Filed Notice of Motion re: Assign Rents to Pltf. RET. 10/20/70.	
Oct. 21, 70	Filed MEMO.END. on motion filed 9-28-70 Motion granted. Submit order as directed by the court. Mansfield J.	
Oct. 28-70	Filed ORDER that all rents collected from premises 575 E 168 St. NY and held in escrow be paid to plaintiff United Mutual Life Ins. Co.; ordered that the plaintiff be assigned for all future rents for the period of pendency of this action, etc. to be used by pltf. with management authority of receiver-ship as required and in reduction of and abatement of its mortgage. Mansfield, J. (mailed notice).	
Nov. 10-70	Filed Motion requesting change of venue and affidavit in support of motion. RET. 11/24/70.	
Dec. 2-70	Filed Order to Show Cause re: Vacate and, or modify order Ret. 12/8/70.	
Dec. 2-70	Filed Memorandum in support of motion.	
Jan. 12-71	Filed letter from Wm. J. Davenport of Leonia, New Jersey regarding a con-current action is residual in the U.S. Supreme Court.	
Jan. 27, 71	Filed MEMORANDUM AND ORDER. Accordingly, movants' motions for remand and to vacate or modify an order of this court are in all respects denied. So Ordered. MacMahon J. -mailed notice.	
Dec. 15-70	Filed (in court) Affidavit in opposition to motion for change of venue.	
Jan. 27-71	Filed MEMO.END. on motion filed 11/10/70. Defendant's motion for a change of venue is in all respects denied. So ordered. MacMahon, J. (mailed notice).	
Dec. 15-70	Filed (in court) Affidavit and Motion in reply to order to show cause dated 12/1/70.	
Jan. 27-71	Filed MEMO.END. on motion to vacate or modify order filed 12/2/70. Movants' motions for remand and to vacate or modify an order of this court are in all respects denied. So ordered. MacMahon, J.	
Feb. 18-71	Filed Notice of Motion re: Vacate Receivership. RET. 3/2/71. (mailed notice).	
Apr. 6-71	Filed MEMO.END. on motion papers filed 2/18/71. Motion denied in accordance with the Court's rulings following argument. SETTLE ORDER ON NOTICE. Frankel, J. (mailed notice)	
May 18-71	Filed Notice of Motion re: Re-hear Motion. RET. 5/25/71.	
May 26-71	Filed MEMO.END. on motion papers filed 5/18/71. Motion denied. So ordered. Frankel, J. (mailed notice).	
Jun 30-71	Filed Order that the receivership in this action held by plaintiff is held now by this court to be vacated, and that all management authority is restored forthwith to William J. Davenport who is owner of the subject property. with MEMO.END. Motion denied. So ordered. Frankel, J.	
Jul 12-71	Filed Notice of Motion re: Clarification of Receiverships. Ret. 7/27/71. by William J. Davenport (Pro se).	
Jul 12-71	Filed Notice of Motion re: Amend Complaint. Ret. 7/27/71. (by Davenport).	
Jul. 27-71	Filed deft. W.J. Davenport statement of perspective.	
Aug. 17-71	Filed In Court Affidvt. of David N. Dinkins, for pltf. in opposition to motion seeking an accounting.	
Aug. 20-71	Filed Memo Endorsed on motion filed 7-12-71--Motion disposed of in accordance with Court's ruling, following argument. Submit proposed order as agreed upon. Motley, J.	
Aug. 20-71	Filed Memo Endorsed on motion filed 7-12-71--Motion disposed of in accordance with Court's ruling following argument. Submit proposed order as agreed upon. Motley, J.	
AUG 27-71	Filed order that calendar clerk release records belonging to N.Y. Rent Control Admin. to W.J. Davenport in presence of a calendar clerk to be peroxed on the 5th floor. Clerk shall not return records to the Rent Control Admin until Sept. 3-71. So ordered. Motley, J.	

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D. C. 110 Re

JUDGE CARTER

DATE	PROCEEDINGS	Date Order Judgment No.
SEPT 10 71	Filed Letter from Wm. J. Davenport dtd 9-2-71 to Pro-se clerk, pursuant to Rule 4 MROP.	
Sep. 5-72	Filed Notice of Motion re: Joinder 2 related actions Ret. 9/26/72 (also in 1 Civ. 4263.)	
Oct. 12-72	Filed Affidavit of Jerry Nicholson (also in 71 Civ. 4263).	
Dec 5-72	Filed Affidavit & Notice of Motion by deft (Davenport) for an order transmitting or submitting the records of this case as an evidentiary exhibit to the Second Circuit Court of Appeals in the Civil Action 71 Civ 4263 Davenport vs. Allianz, et-al.	
May-17-74	Filed deft. pro-se petition for relief upon dismissal of this action. (by deft. Davenport)	
May 17-74	Filed order that action is dismissed for lack of prosecution without prej. or without costs. Carter, J. m/n	
Jun-14-74	Filed deft. William J. Davenport's notice of appeal to the USCA for the 2nd Circuit from implicit portion of order of dismissal which concerns open motions referring to accounting for funds etc. - copy mailed to Winston D. Grace, Sec. Treas. United Mutual Life Ins. Co.	
Jun-19-74	Filed order that defendants Ex-Parte application for time extension until 7-8-74 of an appeal noticed in this action on 6-14-74, whereby the time specified by the rules of this court are stayed until that date, being consistent with the requirement of this court is granted. The afore stated noticed appeal of a motion previously before this court will proceed as if filed upon that date unless otherwise modified by the court. So ordered - Carter, J. m/n	
JUL 17 74	PRE-TRIAL CONFERENCE HELD BY	
JUL 17 74	Filed order that this Court, effective with this order extends the time required for filing papers in that related appeal docket No. T-3621, by an additional ten days. The said time requirements shall begin to run in the appeal action starting July 18, 1974 - So ordered. - Carter, J. m/n	
JUL 19-74	FILED PLAINTIFF'S AFFIDVT. of Winston D. Grace of accounting.	
JUL 19-74	FILED OPINION 442189...for all the reasons stated herein, my order of May 17, 1974, is vacated, the lien on the subject property is dissolved, defendant is released from the underlying obligations, the receiver is discharged without compensation for fees or costs, and the action is dismissed with prejudice for failure to prosecute. So ordered, - Carter, J. m/n	
Jul- 1-74	Filed defendant's statement as of 7-1-74	
Jul- 2-74	Filed defendant Davenport's reply to pltf's statement of accounting.	
Aug-1-74	Filed deft. Davenport's notice - affdvt. and motion to discontinue appeal.	
02-14-75	Filed pltf's notice of motion for reconsideration of the order dismissing the complaint. ret. February 28, 1975.	
02-21-75	Filed deft's affidavits and notice of motion <i>error</i> deft's answer to plaintiff's motion to re-consider.	
04-04-75	Filed Opinion 442189...The case will be called for an evidentiary hearing for the purpose of determining what the true facts are. The parties will be given notice of the hearing date. On the basis of the hearing, the court will determine whether reconsideration is warranted. It is so ordered. - Carter, J. m/n to Atty. for pltf. and notice to deft. by pro-se clerk.	
04-23-75	Filed deft. Davenport's statement supplementing the answer to plaintiff's motion to reconsider.	

DATE	PROCEEDINGS	DATE
05-16-75	Filed deft. Davenport's motion seeking reassignment due to apparent prejudice by the presiding Judge.	
05-27-75	Filed deft. (pro-se)-motion-to-enjoin-in-accordance-with-F.R.C.P.-42.	
06-04-75	Filed defendant's motion/application for pre-trial hearing to determine the issues of trial and such extension of time preceeding trial as necessary to subpoena witnesses.	
06-09-75	Filed deft's opposition to order as presented for settlement.	
06-09-75	Filed pliff's affdvt. of June Smith that she served an order with notice of settlement on June 5, 1975.	
06-24-75	Filed affdvt. and order relieving Robert W. Bing as counsel for defendant (not Attorney of record - only presented the deft. on hearing of 5-1-75) -- Carter, J. m/n	
07-02-75	Filed statement of William J. Davenport 7-2-75.	
07-09-75	Filed memo endorsed on pliff's motion filed 6-4-75: Motion denied in open Court. -- So ordered. -- Carter, J. m/n to pro-se clerk for notice.	
07-09-75	Filed memo endorsed on deft's motion filed 5-16-75: Motion denied in open Court. -- So ordered. -- Carter, J. m/n by pro-se clerk.	
07-16-75	Filed deft. Davenport's supplement to this Court's papers.	
07-17-75	Filed pliffs affdvt. requesting an ext. of time to file findings and conclusions.	
07-17-75	Filed deft. Davenport's motion for summary judgment. (Court 28 May 1, 75)	
07-28-75	Hearing held and concluded - Decision reserved. - Carter, J.	
07-02-75	Non-Jury trial began and concluded - Decision reserved - Post trial briefs to be filed by 7-16-75	
06-13-75	Filed true copy of USCA order that the appeal is dismissed.	
07-21-75	Filed memo endorsed on affdvt. requesting ext. of time to file findings and conclusions: Application granted. So ordered. - Carter, J. m/n (request by pliff.)	
07-25-75	Filed defendants (Davenport- pro se) notice of motion to dismiss.	
08-06-75	Filed deft. Davenport's rebuttal to pliff's incorrections of presented "Findings of Fact" and Conclusion of Law. (Court 28 May 1, 75)	
9-19-75	Filed deft. Davenport's motion for summary judgment. (Court 28 May 1, 75)	
3-17-76	Filed Opinion/4/08h....Accordingly, Pltff is entitled to judgment against defts for all the full amt. of indebtedness due and owing on the bond and mortgage.Par. to the terms of their agreement, pltff is entitled to foreclose on the mortgage and sell the premises with the proceeds of the sale to be applied against defts' indebtedness. Settle Order....Carter, J. m/n (4/21/76)	
3-76	Filed Deft Davenport's Notice of Appeal to USCA from an opinion fld 3-17-76....	
4-27-76Notice mailed on 4-14-76 to: Patterson, Mitchell & Jones. Filed Deft. Wm. J. Davenport's Notice of Motion to proceed in forma-pauperis on appeal....no ret date supplied.	
4-30-76	Filed Memo End on bk of motion fld 4-27-76....Motion Granted So Ordered..Carter, J. m/n(Pro Se Ck to mn)	
5-14-76	Filed Deft Davenport's motion to deny judgment and set aside the most recent opinion of this court in this matter 5-14-76.	
5-19-76	Filed Memo End on bk of motion fld 5-14-76....Motion denied...So Ordered..Carter, J. (pro se ck mn)	
	continued on Page 4	

DATE	PROCEEDINGS
5-20-76	Fld Judgment #76,466....Ordered that plttf recover of deft Lin. J. Davenport and Salome Davenport net amt of \$22,168.28, with interest thereon from the date hereof, plus costs and disbursements in this action to be taxed by the Clerk of this Court with interest thereon from the date hereof, and that plttf have execution therefore, and that in addl to other remedies available to plttf to enforce this judgment the mortgaged premises described hereafter in this judgment shall, at plttf's election, be sold free and clear of all right title and interest of the defts etc.....Ordered that the Clerk of this Court is directed to enter the judgment forthwith....Carter, J. m(pao so ck m)
6-14-76	Judgment Entered 5-21-76---Clerk (Clerk's Office) at 5-21-76. Fld Order that a stenographic transcript of the proceedings (hearing) be prepared at the expense of the U.S....Carter, J.